

**IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE**

**[2007] SGDC 218/219**

DAC 1041/07; PS 1495-1496/06  
Magistrate's Appeal No. 92 and  
94/2007/01

Public Prosecutor

*Against*

Lee Eng Keong  
NRIC No: S1492054-D  
*and*  
Tang Yi Ting  
NRIC No: S1481934-G

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**FOUNDATIONS OF DECISION**

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**Public Prosecutor**  
**v**  
**Lee Eng Keong & Tang Yi Ting**

**[2007] SGDC 218/219**

District Court – DAC 1041/2007 & PS 1495-6/2006  
District Judge Shobha G. Nair  
23 April 2007; 24 April 2007; 9 May 2007; 10 May 2007; 18 June 2007

10 August 2007

**District Judge Shobha G. Nair**

1. The Accused persons, Lee Eng Keong (hereinafter ‘1<sup>st</sup> Accused’) and Tang Yi Ting (hereinafter ‘2<sup>nd</sup> Accused’) were, in accordance with the provisions of s 176 of the Criminal Procedure Code (Cap 68), tried jointly for the following offences:<sup>1</sup>

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<sup>1</sup> Defence Counsel consented to the application for a joint trial

*1<sup>st</sup> charge (amended) against the 1st Accused (Exhibit P1)*

You,

Lee Eng Keong, m/44 years  
NRIC No: S1492054-D

are charged that you, on the 20<sup>th</sup> July 2005 at about 3.15 am, along Jalan Toa Payoh, Singapore, when driving motor car SBU 2299 H, did have so much alcohol in your body that the proportion of it in your breath, to wit, not less than 77 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit of 35 microgrammes of alcohol in 100 millilitres of breath and you have thereby committed an offence punishable under Section 67 (1)(b) of the Road Traffic Act, Chapter 276.

*2<sup>nd</sup> charge against the 1st Accused (Exhibit P2)*

You,

Lee Eng Keong, male/44 years  
NRIC No: S 1492054-D

are charged that you on or about the 25<sup>th</sup> of July 2005 at about 10.10 am, at Traffic Police Department, Singapore, did give to a public servant, namely Staff Sergeant Khoo Kok Min of the Singapore Police Force, information in a police statement, to the effect that one Tang Yi Ting was the driver of the

motorcar SBU 2299 H in the morning of 20<sup>th</sup> July 2005, which information you knew to be false, knowing it to be likely that you would thereby cause such public servant to omit the conduct of investigations into the offence of drink driving committed by you, which the said public servant would not have omitted if the true state of facts were known to him and you have thereby committed an offence punishable under section 182 of the Penal Code (Chapter 224).

*Charge against the 2<sup>nd</sup> Accused (Exhibit P3)*

You,

Tang Yi Ting, F/44 years  
NRIC No: S 14811934-G

are charged that you, on or about the 25<sup>th</sup> July 2005, at about 11.25 am, at Traffic Police Department, Singapore, did give to a public servant, namely Staff Sergeant Khoo Kok Min of the Singapore Police Force, information in a police statement, to the effect that you were the driver of the motorcar SBU 2299 H in the morning of 20<sup>th</sup> July 2005, which information you knew to be false, knowing it likely that you would thereby cause such public servant to omit the conduct of investigations into the offence of drink driving committed by one Lee Eng Keong, which the said public servant would not have omitted

if the true state of facts were known to him, and you have thereby committed an offence punishable under section 182 of the Penal Code, Chapter 224.<sup>2</sup>

2. Having heard the evidence and the submissions on the charges, I was of the view that the prosecution had proven its case beyond reasonable doubt and convicted both Accused on the charges they faced. Both the Accused declined to provide any mitigation plea when called on to do so. I therefore proceeded to consider the appropriate sentence. For the 1<sup>st</sup> Accused, I imposed a fine of \$2 500 and disqualified him from holding or obtaining a driving licence for a period of 18 months in respect of the drink driving charge. He was sentenced to an imprisonment term of 2 weeks for the charge under s 182 of the Penal Code. In respect of the 2<sup>nd</sup> Accused, I imposed an imprisonment term of 2 weeks for the charge under s 182 of the Penal Code. Both Accused are currently on bail pending appeal in respect of the sentences for the offence under s 182 of the Penal Code. The 1<sup>st</sup> Accused has paid the fine and has surrendered his driving licence to the Traffic Police.

### **The Prosecution**

3. It was the prosecution's case that on 20<sup>th</sup> July 2005 a road-block was set up along Jalan Toa Payoh towards the Pan Island Expressway/Central Expressway at about 2.30 am. The prosecution called on a total of 4 officers

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<sup>2</sup> The sanction of the Public Prosecutor for the prosecution of the offence under s 182 of the Penal Code (Cap 224), as required under s 129(1)(a) of the Criminal Procedure Code (Cap 68), was obtained.

from the Traffic Police Department, namely, the investigation officer and 3 officers who manned the road-block on the day in question.

*PW1 – Staff Sergeant Khoo Kok Min*

4. Sgt Khoo was the investigation officer for the matters brought before this court and had lodged complaints against the 1<sup>st</sup> and 2<sup>nd</sup> Accused alleging the commission of an offence under s 182 of the Penal Code.<sup>3</sup> Through Sgt Khoo, the breath alcohol test record (Exhibit P5), photographs of the scene of the alleged incident (Exhibits P6-P11) and a copy of a page taken from the ‘Singapore Street Directory’ showing a map of the area where the offence was alleged to have taken place were admitted in evidence. The admission of all these exhibits were consented to by the defence.

*PW2 – Sergeant Ng Keng Lin*

5. It was the evidence of Sgt Ng that he was standing together with Station Inspector Rayme Darman at the point marked ‘A’ on exhibit P7 when he was told by Station Inspector Muhamad Aziz that a car had stopped at a distance away from the road-block. SI Aziz was standing in the middle of the road at the point marked ‘C’ on exhibit P7. Sgt Ng was instructed to give chase together with SI Rayme. This was at about 3.15 am. Sgt Ng was facing SI Aziz when he was alerted by the latter and upon turning towards the direction pointed out by SI Aziz, he observed that the headlights of the car

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<sup>3</sup> Exhibits P16 and P17

were switched off and a male Chinese person came out from the driver's side of the car. This was observed from a distance of about 40 metres and it was Sgt Ng's testimony that the car was parked at the point marked 'B' on Exhibit P7. The male Chinese person was identified by Sgt Ng to be the 1<sup>st</sup> Accused. Sgt Ng gave evidence that he ran towards the 1<sup>st</sup> Accused and SI Rayme was behind him. At a distance of some 20 metres from the car, he saw the 1<sup>st</sup> Accused use a remote device to lock his car after which he headed towards Serangoon Road and turned into Opal Crescent. It was Sgt Ng's evidence that as he followed the 1<sup>st</sup> Accused, he passed the parked car, a red colour Mazda bearing the registration number SBU 2299 H. He stated that there was no one else present in the car at the time. He also confirmed that apart from the 1<sup>st</sup> Accused, he did not see anyone come out of the car. He specifically stated that the 2<sup>nd</sup> Accused was not seen at the place where the car was parked nor in the vicinity either at the time he passed the car or subsequently.

6. Sgt Ng testified that the 1<sup>st</sup> Accused was found near a coffee shop along Opal Crescent. He confirmed that the coffee shop is as shown in defence exhibit D2 and D3 (Kim San Restaurant/Tian Wai Tian Fish Head Steamboat). Sgt Ng testified that the 1<sup>st</sup> Accused "smelt of alcohol". The 1<sup>st</sup> Accused was asked why he had walked off after having parked his car before the road-block. The 1<sup>st</sup> Accused denied having driven any vehicle and claimed that he was looking for a toilet. A search of his person was conducted and a car key was found in a pocket. The word 'Mazda' appeared on a tag attached to the key but the Accused denied that the car found near the road-block belonged to him.

7. The 1<sup>st</sup> Accused was asked to follow Sgt Ng and SI Rayme to the location of the parked car. The 1<sup>st</sup> Accused insisted on wanting to use the toilet and claimed that the officers had no right to stop him from doing so. He was escorted to the toilet located at the coffee shop and thereafter to the car. He was asked to use the key to attempt to unlock the vehicle. He used the remote device and was successful. The 1<sup>st</sup> Accused was questioned further on the ownership of the car. He then admitted to Sgt Ng and SI Rayme that the car belonged to him. A hand-held breathalyser test was conducted. As the results were positive for alcohol consumption, an arrest report was put up by Sgt Ng (exhibit P4) and the 1<sup>st</sup> Accused brought to the police station.

*PW3 – Station Inspector Rayme Darman*

8. SI Rayme confirmed that he was with Sgt Ng when they were informed by SI Aziz that a car had stopped before the road-block point. He also confirmed that Sgt Ng ran ahead of him towards the car. It was SI Rayme's evidence that he observed the car door open and a male person whom he identified to be the 1<sup>st</sup> Accused come out of the driver's side of the car. He confirmed the distance to be about 40 metres and that his view was clear and unobstructed. The 1<sup>st</sup> Accused was observed to have walked towards the rear of the car and across a field towards Opal Crescent. SI Rayme instructed Sgt Ng to continue to give chase while he inspected the parked car. He confirmed that no one else was in the car.

9. Upon catching up with Sgt Ng, it was SI Rayme's evidence that Sgt Ng had already detained the 1<sup>st</sup> Accused opposite a coffee shop along Opal

Crescent. SI Rayme was informed by Sgt Ng that the 1<sup>st</sup> Accused denied having driven the car and had refused to give his particulars. SI Rayme then instructed Sgt Ng to conduct a search of the 1<sup>st</sup> Accused. A set of keys was found on him which included a car key that related to a 'Mazda'. He was asked to follow the officers to the place where the car was parked. The 1<sup>st</sup> Accused insisted on using a toilet. He was escorted to one located at the coffee shop and escorted thereafter to the location of the parked car.

10. It was SI Rayme's evidence that the car door was opened using the key found on the 1<sup>st</sup> Accused. He testified that Sgt Ng asked the 1<sup>st</sup> Accused again whether the car belonged to him. At this point in time, he admitted that it did. A breathalyser test was conducted and as he failed the test, an arrest report was put up by Sgt Ng and the 1<sup>st</sup> Accused taken to the police station.

11. It was SI Rayme's evidence that the 2<sup>nd</sup> Accused was not seen in the car or in the vicinity of the car at any point in time. He also confirmed that the 2<sup>nd</sup> Accused did not appear at the scene nor talk to any officer at any point in time.

*PW4 - Station Inspector Muhamad Aziz Bin Elias*

12. SI Aziz testified that he acted as a "stopper" during the road-block exercise and was positioned in the middle of the road as shown by point marked 'C' on exhibit P7. He noticed that a car had stopped about 30-40 metres before the road-block. The headlights were switched off and a male

person was seen coming out from the driver's side of the car, proceeding towards the rear of the car and heading thereafter towards Opal Crescent. He was unable to identify the 1<sup>st</sup> Accused as the male person he saw coming out of the car. SI Aziz signalled to Sgt Ng and SI Rayme to give chase.

13. It was SI Aziz's evidence that he saw Sgt Ng and SI Rayme head towards Opal Crescent but lost sight of them and had no knowledge of what happened thereafter. It was SI Aziz's evidence that he subsequently met Sgt Ng and SI Rayme at Opal Crescent. Having seen that the 1<sup>st</sup> Accused was already detained, SI Aziz returned to the road-block area and waited for Sgt Ng and SI Rayme to finish their work. He said that there were three police cars parked at the road-block area which he removed to a bus-bay (which can be partially seen on exhibit P7). He could not recall with certainty as to whether Sgt Ng and SI Rayme had returned to the parked car with the 1<sup>st</sup> Accused and assumed that they had conducted what he termed "normal investigations". He left in his car before Sgt Ng and SI Rayme returned to the road-block area. He confirmed that he heard over the police radio set that a breathalyser test was conducted and that the 1<sup>st</sup> Accused was brought back to the police station.

14. The car bearing registration number SBU 2299 H was towed away. Upon reaching the police station, a breath alcohol test was done and the results revealed that the 1<sup>st</sup> Accused had 77 microgrammes of alcohol per 100 millilitres of breath which is above the prescribed limit of 35 microgrammes of alcohol per 100 millilitres of breath. He was given the opportunity of calling on someone to bail him out and he called on a friend to do so.

15. On the 25<sup>th</sup> July 2006, the 1<sup>st</sup> and 2<sup>nd</sup> Accused gave statements to Sgt Khoo Kok Min to the effect that it was the 2<sup>nd</sup> Accused who was the driver on 20<sup>th</sup> July 2005 and not the 1<sup>st</sup> Accused which they knew to be untrue. The statements were admitted without contest as evidence (exhibits P13 and P14). This caused the Traffic Police to omit to investigate into an offence of drink driving by the 1<sup>st</sup> Accused.

### **The Defence**

16. It was the position of the 1<sup>st</sup> Accused that on 19<sup>th</sup> July 2005, he drove the car bearing registration number SBU 2299 H to his place of work. The car was registered in the name of the 2<sup>nd</sup> Accused (whom he referred to as his wife though not legally married). He finished work at about 10 pm and drove to his home in Toa Payoh to park his car before proceeding to a karaoke lounge/night club called Golden Crystal Night Club situated along Middle Road by means of a taxi. The purpose of going to the karaoke lounge/night club was to celebrate the recent marriage of one of his friends.

17. The 1<sup>st</sup> Accused arrived at the club sometime between 10 – 11 pm on 19/7/2005 and claimed to have left when all the lights of the nightclub were switched off. He said he was a “little tipsy” and upon reaching the road at the foot of the building, he saw the 2<sup>nd</sup> Accused. She told him to get into the car SBU 2299 H and she drove the same.

18. During the journey home, the 1<sup>st</sup> Accused's mobile phone kept ringing which caused the 2<sup>nd</sup> Accused to suspect that it was from a lady friend of the 1<sup>st</sup> Accused. A dispute broke out and the 1<sup>st</sup> Accused insisted on alighting. He pulled at the 2<sup>nd</sup> Accused' hair which prompted her to stop the vehicle. He claimed that he also wanted to alight to use a toilet. When the car stopped, he got off and proceeded to a coffee shop along Opal Crescent. This coffee shop appears in defence exhibits D2 and D3. He relieved himself at the back of the coffee shop and proceeded to sit at a table as he felt that he could not walk.

19. It was his evidence that while resting at the coffee shop, someone shouted at him to wake up. He was asked what he was doing at the coffee shop. The 1<sup>st</sup> Accused did not know how to respond to the question and said that he was not sure what his reply was. He was then searched and a set of keys, including a car key, taken from him. He told the person who questioned him that the vehicle the car key related to did not belong to him nor did he drive it. He then spoke of how two more police officers came to the scene. He asked to go to the toilet after which he was handcuffed and taken to the police station. He enquired why he was being handcuffed and was told that it was for alcohol consumption.

20. It was the 1<sup>st</sup> Accused's evidence that he was not brought to the car which the police claimed was driven by him nor was any hand-held breathalyser test conducted. Whilst at the station, he claimed to have called the 2<sup>nd</sup> Accused who refused to be his bailor. He then called on a friend who stood as his bailor.

21. The 2<sup>nd</sup> Accused testified that she drove her car SBU 2299 H to look for the 1<sup>st</sup> Accused in the early hours of 20<sup>th</sup> July 2005 at the karaoke lounge/night club along Middle Road. She decided to go to this specific entertainment outlet because she had seen many receipts showing patronage by the 1<sup>st</sup> Accused of this place. She waited for about an hour and a half outside the club and was relieved to see him come out of the club alone. She told him to enter the front passenger side of the car. She claimed she drove the car with the intention of heading towards their home. While on their way, the 1<sup>st</sup> Accused's mobile phone rang incessantly and a quarrel broke out over the identity of the caller and nature of the calls. The 2<sup>nd</sup> Accused said that she was asked to stop her car which she resisted until the 1<sup>st</sup> Accused began to get aggressive. He pulled her hair which caused her to stop at a point before the traffic light shown on exhibit D4 and Exhibit D5 (the position of the SMRT bus). He then alighted at a grass verge which is partly shown on Exhibit D2. The 2<sup>nd</sup> Accused claimed that she drove off, making a left turn before stopping immediately after the traffic light. She estimated her travelling speed from the time she let the 1<sup>st</sup> Accused off to the time she stopped her car at a point after the traffic light to be 20 km p/h and the time taken to be less than 5 minutes.

22. She claimed that she then got out of her car as she was worried for him and she walked around to look for the 1<sup>st</sup> Accused for a long time but to no avail. She claimed to have been in a state of depression and was unsure as to her whereabouts. At about 4 or 5 am, she decided to head home as their 8 year old daughter was home alone. She realised that she was far away from the place she parked her car and she decided to take a taxi to the location. Upon reaching the location, she realised that her car was no longer there. She decided to proceed home. She did not make a report that her car was missing

as her priority at the time was to return home to her child. It was her evidence that she did not see the road-block set up along Jalan Toa Payoh and that she did not see any police officer in the vicinity.

## **Findings**

### *The elements of each charge*

23. For the offence under s 67(1) (b) of the Road Traffic Act (Cap 276) to be made out, the prosecution's obligation was to prove beyond reasonable doubt that the 1<sup>st</sup> Accused was:

- (a) driving the car (SBU 2299 H) on the 20<sup>th</sup> July 2005 at about 3.15 am along Jalan Toa Payoh
- (b) having consumed alcohol such that the proportion of alcohol in his breath measured 77 microgrammes of alcohol per 100 millilitres of breath.<sup>4</sup>

24. For the offence under s 182 of the Penal Code to be made out, the prosecution had to prove that:

- (a) statements were given to a public servant, namely, Sgt Khoo Kok Min, by the 1<sup>st</sup> and 2<sup>nd</sup> Accused;

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<sup>4</sup> The legal limit is 35 mg of alcohol per 100 ml of breath

- (b) the statements were false;
- (c) the 1<sup>st</sup> and 2<sup>nd</sup> Accused knew that the statements were false; and
- (d) the 1<sup>st</sup> and 2<sup>nd</sup> Accused knew that by giving the false statements, Sgt Khoo would omit to conduct investigations into an offence of drink driving committed by the 1<sup>st</sup> Accused which Sgt Khoo would not have omitted had he known the true state of facts.

*Findings of Fact*

25. This case was essentially contested on the basis that the police had wrongfully arrested the 1<sup>st</sup> Accused on suspicion of drink driving when it was the 2<sup>nd</sup> Accused who drove the car at all times. In assessing the evidence of the prosecution witnesses, I was guided by the observation of Yong Pung How, CJ (as he then was) in **Farida Begam d/o Mohd Artham v PP**<sup>5</sup> that findings as to the credibility of a witness can be based on his demeanour and the internal consistency of his own evidence or the external consistency between his own evidence and extrinsic evidence, or some combination of these.

26. The prosecution witnesses, Sgt Ng and SI Rayme were clear in their testimony that they saw the 1<sup>st</sup> Accused come out of driver's side of the car which was parked a distance of 40 metres away from the road-block after having switched off the car's headlights. They were confident in giving their answers during cross-examination and I saw no reason to doubt the officers.

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<sup>5</sup> [2001] 4 SLR 610

27. Sergeant Ng testified that he had observed the 1<sup>st</sup> Accused from the time he came out of the driver's side of the car till the time he was detained near a coffee shop along Opal Crescent. Under cross-examination, the exchange on the issue of identity was as follows:<sup>6</sup>

Q: Whilst you were running towards the vehicle, your eyes focussed on vehicle?

A: Yes.

Q: You saw the headlights turned off?

A: Yes.

Q: Would you agree that if you are facing that situation – headlights shining and turned off - you would suffer a temporary blindness [*sic*]?

A: No.

Q: Suggest to you that having a headlight shine on you and have it turned off – you would suffer a temporary blindness [*sic*].

A: I disagree.

Q: You claim you can identify accused?

A: Yes.

Q: Without doubt.

A: Yes.

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<sup>6</sup> NE at page 26

Q: Distance of 40 metres?

A: When Accused came out of vehicle, I gave chase and managed to detain him. I totally did not lost [*sic*] sight of him.

28. When asked during cross-examination why he did not ask the 1<sup>st</sup> Accused who the driver was when the latter denied it was him, Sgt Ng was clear in his testimony. The following was the exchange<sup>7</sup>:

Q: You have claimed that Lee had said he wasn't the driver?

A: Yes.

Q: Did you then ask him who then was the driver?

A: No.

Q: Why?

A: Because I'm sure that he was the one who got out of the driver's seat.

Q: Would it be prudent for you to clarify that he was lying?

A: No. Because I have no doubt in myself.

Q: I'm putting to you that the vehicle didn't stop at 40 metres away from the road-block.

A: Then how far? 40 metres is a rough estimation.

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<sup>7</sup> NE at page 33E;34

Q: I'm putting it to you that the vehicle was stationed around a bend more than 40 metres away from you and cannot be seen by you.

A: Strongly disagree.

29. Sgt Ng's testimony that the Accused was detained along Opal Crescent near a coffee shop and found to be in possession of a car key which suggested ownership of the Mazda found along Jalan Toa Payoh as well as having escorted the 1<sup>st</sup> Accused to the car to attempt to open the car door were not shaken under cross-examination. His evidence that a hand-held breathalyser was used to ascertain if the 1<sup>st</sup> Accused had consumed alcohol is supported by the arrest report he put up (exhibit P4).

30. SI Rayme's evidence was materially consistent with that of Sgt Ng. SI Rayme confirmed that he saw the 1<sup>st</sup> Accused come out of the driver's side of the car which was parked some 40 metres away and gave evidence that he followed behind Sgt Ng in approaching the 1<sup>st</sup> Accused. He confirmed that the 1<sup>st</sup> Accused was detained *opposite* a coffee shop along Opal Crescent by Sgt Ng and that he had given instructions to Sgt Ng to search the Accused. A key was found on the person of the 1<sup>st</sup> Accused and he was brought to the parked car where he was able to unlock the car using the same key. Having failed the breathalyser test, he was placed under arrest. SI Rayme's evidence stood well under cross-examination.

31. Both officers confirmed that they had passed the car when they gave chase and they did not see anyone else in the car. They did not see or speak to the 2<sup>nd</sup> Accused at the spot the car was parked at during the time they passed the same or at any point thereafter.<sup>8</sup> This was not challenged by the defence. The following was the exchange during examination-in-chief of Sgt Ng:

Q: From time you spotted him to time detained were [*sic*] there any other person with him?

A: No.

Q: From time you spotted accused and went after him, did you see any female Chinese near the car?

A: No one in the car.

Q: Never?

A: No.

Q: Did you see specifically this lady near the car? [refers to B2]

A: No.

Q: Did you see her at location of incident?

A: No.

32. SI Aziz's evidence that a male person came out from the driver's side of the car supports the position of Sgt Ng and SI Rayme. I did not however

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<sup>8</sup> NE at pages 22;40

rely on the evidence of SI Aziz as he based his conclusion on the clothes worn by the person he had seen come out of the car as opposed to any other fact. Notwithstanding this, I took note of SI Aziz's position that no other person was seen coming out of the car as it lent force to Sgt Ng and SI Rayme's evidence on this point.

33. It was the contention of the defence that this court should not accept the identification of the 1<sup>st</sup> Accused by Sgt Ng and SI Rayme and the evidence of SI Aziz that the driver was of the male gender for two reasons:<sup>9</sup>

- (a) that the account of events after the 1<sup>st</sup> Accused was spotted as given by Sgt Ng is inherently incredible; and
- (b) there was no mention of the 1<sup>st</sup> Accused as the driver of the car in the arrest report (exhibit P4) or in the complaints lodged by Sgt Khoo of an offence under s 182 of the Penal Code (exhibits P15 and P16).

34. The defence submitted that it is "wholly incredible" that Sgt Ng only managed to apprehend the 1<sup>st</sup> Accused at a place some 50- 70 metres from the parked car if Sgt Ng had seen the 1<sup>st</sup> Accused locking his car from a distance of 20 metres and thereafter walk away while Sgt Ng himself was running towards him. Sgt Ng explained that it was not the case that he could not detain him sooner but that he was cautious in his approach. He was unsure if the 1<sup>st</sup> Accused had any weapon on him and he needed SI Rayme who was behind him to catch up with him before he proceeded to detain him.<sup>10</sup> It was the

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<sup>9</sup> Defence Closing Submissions at paragraph 16

<sup>10</sup> NE at page 28D; 29A

evidence of SI Rayme that he was behind Sgt Ng and that he was about 10 metres away when he saw Sgt Ng detain the 1<sup>st</sup> Accused opposite the coffee shop.<sup>11</sup> It was the submission of the defence that Sgt Ng's explanation on why he did not detain him sooner than at a distance of 50-70 metres could therefore not be believed since he chose to detain him even before the arrival of Sgt Rayme.

35. I did not find Sgt Ng's evidence unbelievable. He did not say that he was waiting for SI Rayme to be literally next to him before he detained the 1<sup>st</sup> Accused. SI Rayme had stopped to check the car before proceeding towards Sgt Ng and the 1<sup>st</sup> Accused. Sgt Ng waited for SI Rayme to *catch up* with him. SI Rayme being at a short distance of 10 metres away from Sgt Ng was sufficient reinforcement for Sgt Ng to effect detention without compromising safety.

36. Sgt Ng and SI Rayme estimated the distance between the place the car stopped and the place the 1<sup>st</sup> Accused was detained differently. Sgt Ng said it was 50 – 70 metres while SI Rayme estimated it to be about 20 metres. I did not think this to be a material discrepancy which warranted viewing the evidence of the officers with caution given the fact that the focus of the officers at the time was to approach the driver of the vehicle without comprising safety. In **Chean Siong Guat v PP**<sup>12</sup> it was observed by Abdul Hamid J that:

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<sup>11</sup> NE at page 42A-B

<sup>12</sup> [1969] 2 MLJ 63. The observations in this case have been cited with approval by our courts in numerous cases. See in this regard, **Mohamed Abdullah s/o Abdul Razak v PP** [2000] 2 SLR 789

*“Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses is a common experience. In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognised by the court. Being a question of fact, what a magistrate needs to do is to consider the discrepancies and say whether they are minor or serious discrepancies”.*

37. It was also the defence position that Sgt Ng and SI Rayme did not ask the 1<sup>st</sup> Accused the obvious question of why he had stopped 40 metres away before the road-block and walk away from the car.<sup>13</sup> I did not accept this submission. First, this submission is in error. Sgt Ng did say during examination-in-chief that he questioned the Accused on why he parked his car at the road block and walked off.<sup>14</sup> In respect of SI Rayme, it was his evidence that he did not give the specific direction to Sgt Ng to make such an enquiry for “obvious reasons”.<sup>15</sup> It was the evidence of the officers that they saw the 1<sup>st</sup> Accused stop the car 40 metres away from the road-block and Sgt Ng gave

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<sup>13</sup> Defence Closing Submission at paragraph 23.

<sup>14</sup> NE at page 20D-E

<sup>15</sup> NE at page 44D

evidence that the 1<sup>st</sup> Accused “smelt strongly of alcohol”.<sup>16</sup> This was confirmed by SI Rayme.<sup>17</sup> Putting these facts together, I accepted that there was no need for SI Rayme to give Sgt Ng the specific direction to ask that question.

38. The defence also pointed to exhibit P4 where it is indicated by Sgt Ng that he was informed by the 1<sup>st</sup> Accused that he had come from the Orchard Towers. The defence pointed out that Sgt Ng could not explain why he had written this down when the 1<sup>st</sup> Accused did not in fact patronise any outlet at Orchard Towers. It was the evidence of Sgt Ng that he was *informed* by the 1<sup>st</sup> Accused that he had come from Orchard Towers and not that he knew for a fact that he did. Sgt Ng did not dispute that he may not have in fact come from Orchard Towers. The 1<sup>st</sup> Accused himself was not able to clarify what he had told the officer. I did not find this piece of evidence to be one that attacked the credibility of Sgt Ng as a witness.

39. The defence further contended that exhibit P4 did not make any mention of the 1<sup>st</sup> Accused and that this meant that the 1<sup>st</sup> Accused was not in fact seen to be coming out from the driver’s side of the car. The investigation officer stated that he was identified by the arresting officers and the complaints were lodged on the positive identification by the officers.<sup>18</sup> The

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<sup>16</sup> NE at page 32

<sup>17</sup> NE at page 45

<sup>18</sup> NE at pages 10-11

call by the defence for the statements of the police officers is without regard to the provisions of s 122(1) of the Criminal Procedure Code (Cap 68).<sup>19</sup>

**The defence failed to raise a reasonable doubt**

40. I found the defence case theory fanciful. The theory of the defence was that the officers found an abandoned car parked along Jalan Toa Payoh and embarked on a search to find the driver. Having chanced upon the 1<sup>st</sup> Accused sleeping at a table near a coffee shop, Sgt Ng, without reason, did a search of his person. Having found a car key on him that related to a ‘Mazda’, he together with other officers, promptly handcuffed him and took him to the police station. It was the position of the defence that the officers could not have seen the car as it was parked at a distance of more than 40 metres and away from the line of sight of the officers. They therefore could not have seen the 1<sup>st</sup> Accused come out from the driver’s side of the car. Further, it was the defence position that no hand-held breathalyser test was conducted prior to the 1<sup>st</sup> Accused’s arrest.

41. It was the evidence of the 1<sup>st</sup> Accused that he drove the 2<sup>nd</sup> Accused’s car to work and returned it to the car-park near their home before taking a taxi to the nightclub along Middle Road at about 10 pm. He did not tell the 2<sup>nd</sup> Accused that he had parked it at a specific car lot nor did he tell the 2<sup>nd</sup>

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<sup>19</sup> S 122(1) states that “except as provided in this section, no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence other than a statement that is a written statement admissible under section 141”. See also the exceptions to this as contained in s 122(3) of the Code. The exceptions do not apply in this case. In particular, there was no statement made in the course of an *identification parade*.

Accused that he was going to the nightclub along Middle Road. Although he parked at the car-park near his home, he did not return home to either unload his work things or change his clothes or to see his daughter or to simply leave his car key at home. He went straight to the nightclub. Despite there being no communication between the 1<sup>st</sup> and the 2<sup>nd</sup> Accused, the 2<sup>nd</sup> Accused was able to find the car from the numerous car lots and drive to the exact night club the 1<sup>st</sup> Accused was at.

42. There was no evidence that a specific car lot was reserved for the car in question although it would be reasonable to assume that being residents of a flat at Toa Payoh, they had a season parking coupon to park at the reserved car park lots near their home. It was the evidence of the 2<sup>nd</sup> Accused however, that *she knew that the car* was parked in a specific location because she had seen the car there between 6.30 am and 6.45 am on 19/7/2005 when she was taking her child to school.<sup>20</sup> *This would mean that the 1<sup>st</sup> Accused did not drive the car as he claimed, to work on 19/7/2005.* I bore in mind however that there was no evidence of the time the 1<sup>st</sup> Accused had left for work on 19/7/2005. I therefore entertained the possibility that the 1<sup>st</sup> Accused had not left for work when the car was seen by the 2<sup>nd</sup> Accused. This possibility meant that the car must have been returned to the exact spot by the 1<sup>st</sup> Accused upon his return from work to give any weight to the 2<sup>nd</sup> Accused's position that she knew where the car was parked. This was in my mind, a remote possibility.

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<sup>20</sup> NE at page 113

43. Even I were to assume that the couple had a practice of parking in a specific area, I was not convinced that the 2<sup>nd</sup> Accused could have known that the 1<sup>st</sup> Accused went to the nightclub along Middle Road that night. The 2<sup>nd</sup> Accused explained that she knew he was patronising the nightclub as there were many receipts left in their home showing patronage. When asked if he patronised other pubs/nightclubs, she replied in the affirmative. When asked how often he would stay out late after work, she estimated it to be 3 times a week. With this background, I was not convinced that she would wait for the 1<sup>st</sup> Accused for an hour and a half outside this nightclub along Middle Road with no certainty that he was in fact in that nightclub.

45. The 2<sup>nd</sup> Accused claimed that she stopped the car to enable the 1<sup>st</sup> Accused to alight before the traffic lights shown on D5. They were in the heat of an argument over the possibility that the 1<sup>st</sup> Accused may be having relationships with other ladies. The 1<sup>st</sup> Accused was also aggressive towards the 2<sup>nd</sup> Accused. Soon after allowing the 1<sup>st</sup> Accused to alight and having driven for less than 5 minutes at a speed of about 15-20 km p/h, she stopped her car as her emotions changed quickly to one of concern.

46. She wanted to look for the 1<sup>st</sup> Accused as he had been drinking. She said she stopped her car after the traffic light shown on exhibits D4 and D5. She was not able to say with precision where along that stretch of the road she had stopped the car. If it was at the point the prosecution witnesses indicated the car was seen, then it must mean that the officers had spotted her instead of the 1<sup>st</sup> Accused coming out of the car. Yet it is the clear evidence of the prosecution witnesses that she was no where to be found. It was also the 2<sup>nd</sup>

Accused's evidence that she did not see a road-block nor any police officer in the vicinity. There were five officers on duty that day with two giving chase. The 2<sup>nd</sup> Accused did not sprint out of the car. She was walking aimlessly. The officers would not have missed her. Alternatively, if she as the defence suggests, stopped her car at a point beyond the traffic lights but which was not at the point indicated by the prosecution witnesses, then Sgt Ng, SI Rayme and SI Aziz must all have been lying in their evidence that they saw the car stop some 40 metres away at about the point marked 'B' on exhibit P7. I could find no reason for the officers to have lied.

47. It was the 1<sup>st</sup> Accused's evidence that he had relieved himself behind the coffee shop shown in exhibit D2 and D3 and fell asleep at a table (marked 'X' on exhibit D3) in the coffee shop. He claimed that someone shouted at him to wake up. He claimed that he was not brought back to the car which the police alleged was his; that he never admitted that the car in question belonged to him and that no hand-held breathalyser test was conducted. This is in sharp contrast to the evidence of the police officers and if true may constitute a serious dereliction of duty on the part of the traffic police officers. I found the position of the 1<sup>st</sup> Accused without merit. It was his evidence that he sat at a table at the coffee shop when he was detained by the police. It was Sgt Ng's evidence that he was detained at a spot opposite the coffee shop. When the 1<sup>st</sup> Accused left the nightclub, he intended to head home in a taxi. He was able to walk out of the nightclub without assistance. Having alighted from the 2<sup>nd</sup> Accused's car, he also managed to walk from the grass area shown on exhibit D2 to the back of the coffee shop to relieve himself. Having done so, he suddenly felt that he could not head home in a taxi as he was too "powerless"

to walk.<sup>21</sup> From Exhibit D2, it can be seen that the coffee shop was beside a main road and it would have been easy to hail a taxi either by himself or with the assistance of the coffee shop assistants.

48. The 1<sup>st</sup> Accused claimed he could not remember his answers to questions posed by the police officers because he was drunk. He could not even confirm that Sgt Ng was a police officer although it was Sgt Ng's evidence that he was in uniform. Being in this state, his claims that he could remember not having been brought to the car, not having unlocked the car with the key found on his person and not having been given a hand-held breathalyser test were, in my view, suspect.

49. The defence took the position that SI Aziz's evidence runs counter to that of Sgt Ng and SI Rayme and supports the 1<sup>st</sup> Accused's version that he was not brought back to the car parked along Jalan Toa Payoh<sup>22</sup>. It was the evidence of SI Aziz during cross-examination that he was not aware of what had happened to the 1<sup>st</sup> Accused after Sgt Ng and SI Rayme had detained him. In response to the court seeking clarification as to his knowledge of events after the detention, SI Aziz stated that he returned to the road-block after confirming that Sgt Ng and SI Rayme had detained the 1<sup>st</sup> Accused. He claimed that he did not see the officers after that and believed that the 1<sup>st</sup> Accused was taken by at least one officer to the Central Police Station. Counsel suggested that this must mean that the 1<sup>st</sup> Accused was sent to the

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<sup>21</sup> NE at page 87

<sup>22</sup> Defence Closing Submissions at paragraph 13

Central Police Station from the place of detention – a suggestion accepted by SI Aziz.

50. The submission that SI Aziz's evidence supports the evidence of the 1<sup>st</sup> Accused on this point was not in my mind, supported by the evidence of SI Aziz, if read in its entirety. SI Aziz said that he did not see the officers after having seen Sgt Ng and SI Rayme at the place the 1<sup>st</sup> Accused was detained. It was his evidence that he returned to the road-block, moved the police cars to a bus-bay and left the place shortly thereafter in one of the police cars. It was his evidence that he *did not wait* for the officers to return to the road-block.<sup>23</sup> He stated under cross-examination that he did not know how the 1<sup>st</sup> Accused was conveyed to the Central Police Station.<sup>24</sup> Under re-examination, he said that he could not recall if the officers had returned to the parked car 40 metres away from the road-block but that he knew the 1<sup>st</sup> Accused was brought back to the station after the breathalyser test was conducted. He said, in response to counsel's question on how he knew a breathalyser test was conducted, that he was inside his police car and was about to leave when he heard over the police radio system that the 1<sup>st</sup> Accused was brought back to the station after the breathalyser test was conducted.<sup>25</sup> It must be borne in mind that the bus-bay is a distance away from the area where the 1<sup>st</sup> Accused's car was parked. If SI Aziz was waiting in his car, it is unlikely that he could see what was being done by the two other officers and from the evidence it appears that he did not pay particular attention to the actions of the other two officers. It was SI Aziz's evidence that SI Rayme was also the officer in charge that day and that it was

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<sup>23</sup> NE at page 55

<sup>24</sup> NE at page 56

<sup>25</sup> NE at page 58; 59B

not proper for him to make enquires as to the whereabouts of SI Rayme and Sgt Ng who took instructions from SI Rayme.<sup>26</sup>

51. At no point during the detention of the 1<sup>st</sup> Accused along Opal Crescent did the 1<sup>st</sup> Accused mention to the police officers that he was dropped off by the 2<sup>nd</sup> Accused after an argument in the car. His response when asked why he did not inform the police was simply that the police did not ask him.<sup>27</sup> Knowing that the police was looking into the identity of the driver of the car for which he was found to have a key to, it did not occur to him to immediately tell the officers of how he was driven to the area by the 2<sup>nd</sup> Accused. He was instead, argumentative and uncooperative. I accept that this may have been a result of his having consumed alcohol. The evidence of SI Rayme however was that the 1<sup>st</sup> Accused was coherent when he was speaking which suggested that his lack of cooperation and resistance did not stem from the consumption of alcohol.

52. It was the evidence of the 1<sup>st</sup> Accused that a call was made by him at around 6 am to the 2<sup>nd</sup> Accused whilst at the police station to seek that the 2<sup>nd</sup> Accused stand as his bailor. She refused. I did not accept that having walked out of her car a few hours ago to look for the 1<sup>st</sup> Accused aimlessly and for more than an hour and a half principally because she was concerned for his safety, she then refused to step in as his bailor especially since it is her position that she was the driver of the car.

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<sup>26</sup> NE at page 57C

<sup>27</sup> NE at page 90

53. It was also in my judgment unbelievable that the 2<sup>nd</sup> Accused had left her recently purchased car in the middle of Jalan Toa Payoh without any care and upon returning to the spot where she had parked it and upon discovering that it was missing, continued on her journey in the taxi to her home without making a police report. She could have easily engaged the assistance of the taxi driver or made a report to the police once she reached home. Even on finding out that the 1<sup>st</sup> Accused was in a police station, there was no enquiry on the whereabouts of the car – a car she claimed was driven by her to ferry the 1<sup>st</sup> Accused home.

### **Final Analysis**

54. I was not in doubt. The prosecution presented clear evidence that it was the 1<sup>st</sup> Accused who was seen coming out of the driver's side of car bearing number SBU 2299 H. The 2<sup>nd</sup> Accused was not anywhere near the scene nor did she approach any of the officers. Sgt Ng was firm in his evidence that he kept the 1<sup>st</sup> Accused within his sight at all times until he was detained. Sgt Ng and SI Rayme confirmed that the key found on the 1<sup>st</sup> Accused was used to open the car parked along Jalan Toa Payoh and which was registered in the 2<sup>nd</sup> Accused's name. They also testified that a breathalyser test was conducted prior to taking the 1<sup>st</sup> Accused to the police station.

55. The evidence of the defence lacked merit and suggests that the police went about looking for the owner of a car abandoned along Jalan Toa Payoh instead of verifying the identity of the owner by screening the registration plate number. To accept the evidence of the defence would be to go against the weight of the evidence in this case including accepting that the police officers had conducted themselves most improperly. I could not come to that conclusion and convicted both accused on the charges they faced.

56. In considering sentence, I took into account that this was the 1<sup>st</sup> Accused's first conviction and that the 2<sup>nd</sup> Accused had not been convicted of a similar offence.<sup>28</sup> Both Accused refused to mitigate. The sentence imposed is not a subject of appeal.

SHOBHA G. NAIR  
District Judge

Inspector A Ramasamy for the Prosecution  
Christopher Yap for the Accused

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<sup>28</sup> She had a previous conviction relating to having run a massage establishment without a licence.