



Public Prosecutor

AND

D1 - Hamizan Bin Haji Saban

D2 - Tiong Ho Hwong

(High Court of Brunei Darussalam)
(Criminal Trial No. 24 of 2009)

Steven Chong, J. and Hairol Arni, J.

14 April 2014

Criminal Law – Possession of 792.368 grams of cannabis – Guilty plea – Appropriate sentence.

DPP Hajah Suriana Bte Haji Radin and DPP Amiriah Bte Haji Awang Ali for the Public Prosecutor/Respondent.

Mr. Yusof Halim (M/S Sankaran Halim Advocates and Solicitors) for D1.

Mr. Ridzlan Haji Ibrahim (M/S Ridzlan Lim Advocates and Solicitors) for D2.

Steven Chong, J.:

Hamizan Bin Haji Saban (D1) and Tiong Ho Hwong (D2) were initially charged with the possession for the purpose of trafficking of 792.368 grams of cannabis contrary to section 6(a) of the Misuse of Drugs Act.

On 7 April 2014 the Public Prosecutor preferred an Alternative Charge against D1 and D2 of possession of the same amount of cannabis contrary to section 6(a) of the Misuse of Drugs Act, and an Additional Charge against D1 only, of consuming methylamphetamine contrary to section 6(b) of the Misuse of Drugs Act.

Both D1 and D2 pleaded guilty to the Alternative Charge. D1 also pleaded guilty to the Additional Charge.



The Statement of Facts in relation to the Alternative Charge admitted by D1 and D2 reads as follows:

- "1. On the 17th February 2009 at about 1900 hours, acting upon information, a team of Narcotics Control Bureau (NCB) officers conducted a raid on a Proton Wira car bearing the registration number QMD 2343 which was parked in the vicinity of Simpang 58, Jalan Ban 3, Kg. Mulaut in Brunei Darussalam.*
- 2. As ANO I Yuradani bin Hj Muhd Yunus opened the front passenger door of the said car, D1 who was seated at the front passenger seat threw out a black package from the car which landed on the ground next to the said car.*
- 3. D1 was subsequently detained and handcuffed whereas D2 was detained and handcuffed as he was getting out from driver's seat of the said car.*
- 4. The NCB officers conducted a body search on both D1 and D2 but nothing in relation to drugs were found on them.*
- 5. The black package was then inspected where it was found to contain:*

E1(a) – One clear plastic packet containing dried plant parts;

E1(b) – One clear plastic packet containing dried plant parts;

E1(c) – One pink carrier plastic bags containing 150.042 grams of dried plant parts.
- 6. The said exhibits were subsequently seized by the exhibit officer, ANO II Jawharati binti Awang Hidup.*
- 7. A further search was conducted on the Proton Wira car bearing the registration number QMD 2343 by the NCB officers but nothing in relation to drugs was found.*
- 8. Both D1 and D2 were then brought to the NCB office for further investigations together with the seized items.*



9. *Exhibit E1(a), Exhibit E1(b) and Exhibit E1(c) were subsequently sent to the Department of Scientific Services for analysis. Upon analysis, the dried plant parts in Exhibit E1(a) weighed 497.966 grams, the dried plant parts in Exhibit E1(b) weighed 144.360 grams and the dried plant parts in Exhibit E1(c) weighed 150.042 grams. In total, the dried plant parts weighed 792.368 grams and the dried plants parts were found to be Cannabis, a controlled B drugs under the Misuse of Drugs Act.*
10. *Investigations revealed that D1 and D2 had entered Brunei Darussalam from Miri in the morning of 17th February 2009 using the Proton Wira car bearing the registration number QMD 2343.*
11. *Investigations also revealed that the Proton Wira car bearing the registration number QMD 2343 was registered under the name of Tiong Lew Hwang (a Malaysian citizen) who is the sister of D2.*
12. *D1 and D2 admit being in possession of the 792.368 grams of Cannabis, a Class B controlled drug in contravention of section 6(a) of the Misuse of Drugs Act, Chapter 27.*
13. *On record, D1 and D2 have no previous convictions in Brunei Darussalam.”*

The Statement of Facts in relation to the Additional Charge admitted by D1 reads as follows:

- “14. *On the 12th November 2008 at about 2255 hours, acting upon information, the NCB officers detained the Toyota Kijang bearing the registration number KH8275 in the vicinity of the Bandar Seri Begawan.*
15. *The NCB officers detained 3 males including D1.*
16. *After the search was conducted in the said car, the detainees including D1 were brought to the NCB office for further investigations.*
17. *On the 13th November 2008 at about 0200 hours, D1’s urine sample was taken at the NCB office witnessed by NCB officers.*
18. *D1 put his urine bottle inside the urine box: BKN/D12(C)-03/05.*



19. *D1's urine sample was taken and subsequently sent to the Department of Scientific Services for analysis. The analysis was found to contain Methylamphetamine, a Class A controlled drug.*
20. *D1 admits that on or about the 13th November 2009, he consumed Methylamphetamine, a Class A controlled drug."*

D1 is aged 41 and is divorced. He has a daughter who is 11. D2 is aged 42 and he, too, is divorced.

We take into account the following factors in the favour of the defendants: (1) guilty plea; (2) clear record; and (3) delay.

In relation to the Alternative Charge, having regard to the substantial quantity of cannabis involved, we consider a starting point of 9 years' imprisonment, reduced to 5 years in light of the mitigating circumstances, to be appropriate, and this is the sentence which we impose.

Turning to the Additional Charge, we consider a fine of \$1,500 or 3 months' imprisonment in default of payment, to be appropriate, and this is the sentence which we impose.

The sentence of 5 years' imprisonment is backdated to the date of remand.

As to the sentence of 3 months' imprisonment in default of payment of fine, this is to run consecutively to the sentence of 5 years' imprisonment.

DATO PADUKA STEVEN CHONG
Judge, High Court

DATO PADUKA HAIROL ARNI MAJID
Judge, High Court