IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 159

Magistrate's Appeal No 9857 of 2020

Between

Wang Huijin

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 106 of 2021

Between

Wang Huijin

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Appeals]
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v
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Introduction

1 This was the appellant's appeal against the decision of the District Judge ("the DJ") in *Public Prosecutor v Wang Huijin* [2021] SGDC 173 ("GD").

2 The appellant was convicted after claiming trial to a single charge under s 353 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for using criminal force on a public servant, namely Wyatt Tan Jing Hui ("PW1 Wyatt") of the National Environment Agency ("NEA"), while he was executing his duty as a public servant. The appellant was sentenced to four weeks' imprisonment.

3 By way of criminal motion application HC/CM 106/2021 ("CM 106/2021"), the appellant also sought to adduce fresh evidence in further support of his appeal against his conviction and sentence.

4 I found no merit in the appellant's application in CM 106/2021 and dismissed it. As for the appeal, I found no reason to differ from the DJ's conclusion that the charge had been established beyond reasonable doubt. The sentence imposed was also not manifestly excessive. I set out the reasons for my decision to dismiss both CM 106/2021 and the appeal below.

Facts

Summary of the evidence

5 The appellant is a 47-year-old male. He came to Singapore from China in 1998 and subsequently became a Singapore citizen.[1] At the material time of the alleged offence on 29 January 2018, he was a stockbroker with UOB Kay Hian.[2] PW1 Wyatt, the victim, was an Enforcement Officer authorised to carry out enforcement action on behalf of the NEA. At the material time, he was conducting anti-littering enforcement duties in the Chinatown area, accompanied by PW2 Tay Kwang Hong ("PW2 Tay") and PW3 Brenda Tan Wei Nee ("PW3 Brenda"), who were also NEA officers (collectively, "the NEA officers").

6 The evidence adduced at the trial may be summarised as follows. The NEA officers testified that on 29 January 2018, at or about 6.15pm, they saw the appellant throw a cigarette butt on the floor before walking into a restaurant along Mosque Street. They approached the appellant inside the restaurant, where he was dining and drinking with his client. One or more of them identified themselves as enforcement officers from the NEA by showing their authority

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1 Record of Appeal ("ROA") at p 367 (Notes of Evidence ("NE") Day 3, p 66 at lines 7–8).

2 ROA at p 368 (NE Day 3, p 67 at lines 10–22).

cards to him, informed him of his littering offence and asked him to step out of the restaurant.[3]

7 The appellant complied and PW1 Wyatt explained to the appellant that he had committed a littering offence in contravention of the Environmental Public Health Act (Cap 95, 2002 Rev Ed). He requested for the appellant's particulars so that they could issue him with a Notice to Attend Court ("NTAC").[4] The appellant claimed that he was a tourist but did not have his identification documents with him as he had left his passport in his hotel room at the Marriott Hotel. The appellant offered to lead them to his hotel, which he claimed was nearby.[5] The NEA officers agreed to this proposal as the appellant seemed genuinely co-operative at the time.[6]

8 The appellant suggested that taking a bus would be quicker and boarded a bus in the vicinity of Chinatown MRT station. On the bus ride, the appellant spoke to PW1 Wyatt about "all kinds of water matters"[7] as he thought that this was what the NEA was responsible for, but PW1 Wyatt was unable to answer his questions.[8] The appellant was also suspicious as the three NEA officers were not in uniform and he did not expect them to be graduates.[9] At a bus stop near

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3 ROA at p 30 (NE Day 1, p 13 at lines 6-13); ROA at p 198 (NE Day 2, p 50 at lines 9–14); ROA at p 288 (NE Day 2, p 140 at lines 6–10).

4 ROA at pp 32–33 (NE Day 1, p 15 at lines 13–15; NE Day 1, p 16 at lines 13–19).

5 ROA at pp 32–33 (NE Day 1, p 15 at line 30 to p 16 line 8).

6 ROA at p 33 (NE Day 1, p 16 at lines 9–12).

7 ROA at p 380 (NE Day 3, p 79 at lines 27–31).

8 ROA at p 381 (NE Day 3, p 80 at lines 5–7).

9 ROA at p 381 (NE Day 3, p 80 at lines 15–24).

Great World City, the appellant dashed out of the bus.[10] The NEA officers also alighted. PW1 Wyatt warned the appellant about running away as it would only "complicate the whole enforcement process".[11] The appellant asserted that he was not running away and that the NEA officers should follow him, as his hotel was nearby.[12] Initially all three NEA officers did so, but PW3 Brenda eventually decided to take a bus to Marriott Hotel as she had difficulty keeping up with the appellant's brisk walking pace.[13] From that point on, only PW1 Wyatt and PW2 Tay were walking with the appellant.

9 The appellant walked quickly and boarded another bus at bus stop 13191 (the "Bus Stop"), located along Paterson Road. PW1 Wyatt promptly followed the appellant as he boarded the bus.[14] He identified himself as an NEA officer to the bus driver by showing his authority card, and asked the bus driver not to drive off. The bus driver complied.[15] The appellant then quickly alighted from the stationary bus.[16] PW1 Wyatt also alighted and when he caught up with the appellant, he informed him that the NEA officers had alerted the police for assistance.[17] PW2 Tay called the police sometime between getting off at the bus stop near Great World City and arriving at the Bus Stop.[18]

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10 ROA at p 36 (NE Day 1, p 19 at lines 3–7); ROA at p 382 (NE Day 3, p 81 at lines 9–22).

11 ROA at p 36 (NE Day 1, p 19 at lines 12–16).

12 ROA at p 36 (NE Day 1, p 19 at lines 17–20).

13 ROA at p 292 (NE Day 2, p 144 at lines 14–29).

14 ROA at p 37 (NE Day 1, p 20 at lines 15–20).

15 ROA at p 37 (NE Day 1, p 20 at lines 26–32); ROA at p 478 (NE Day 4, p 68 at lines 26–30).

16 ROA at p 37 (NE Day 1, p 20 at lines 30–32).

17 ROA at p 38 (NE Day 1, p 21 at lines 15–17).

18 ROA at p 207 (NE Day 2, p 59 at lines 29–32).

10 PW1 Wyatt then moved in front of the appellant and tried to block his passage with his back and slow him down as the appellant refused to stop walking.[19] Shortly after, the appellant allegedly pushed PW1 Wyatt on his back close to his shoulder and shouted "get out of my way" in Mandarin.[20] PW1 Wyatt fell forward to the ground[21] and dropped his enforcement device, an iPad.[22] The appellant then sped up and walked briskly towards Orchard Boulevard. After getting up from the ground, PW1 Wyatt managed to catch up with the appellant. PW2 Tay who was walking slightly further behind had witnessed the appellant push PW1 Wyatt.[23]

11 The appellant attempted to board another bus at the bus stop in front of Four Seasons Park. Similar to before, PW1 Wyatt followed suit, identified himself to the bus driver as an NEA officer and requested for him not to drive off.[24] The bus driver complied[25] and the appellant alighted from the bus after he realised that the bus had stopped.[26] The appellant then walked to the junction of Orchard Boulevard and called his wife, telling her to inform the police that there were people trying to kidnap him.[27] Subsequently, he changed his mind and told his wife to call the Chinese Embassy instead.[28] PW1 Wyatt reiterated that they

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19 ROA at p 38 (NE Day 1, p 21 at lines 19–26).

20 ROA at p 40 (NE Day 1, p 23 at lines 2–8).

21 ROA at p 40 (NE Day 1, p 23 at lines 19–31).

22 ROA at p 40 (NE Day 1, p 23 at lines 17–24).

23 ROA at p 209 (NE Day 2, p 61 at lines 5–23).

24 ROA at p 42 (NE Day 1, p 25 at lines 16–20).

25 ROA at p 44 (NE Day 1, p 27 at lines 1–2).

26 ROA at p 44 (NE Day 1, p 27 at lines 4–7).

27 ROA at p 44 (NE Day 1, p 27 at lines 17–26).

28 ROA at p 44 (NE Day 1, p 27 at lines 29–31); ROA at p 486 (NE Day 4, p 76 at lines 12–19).

were not kidnappers and offered to walk with the appellant to the NEA headquarters, which was nearby, to verify their identities. PW1 Wyatt also asked the appellant to co-operate as the police were already on their way.[29] The appellant maintained that he did not believe them and proceeded to walk away from them.[30]

12 At the traffic light facing Goodwood Park Hotel, the appellant dashed across the road despite the pedestrian crossing light being red. PW1 Wyatt and PW2 Tay did not follow suit, as they were concerned for their safety.[31] They subsequently searched for the appellant in the NEA building, but could not find him there.[32] According to the appellant, he had gone to the toilet in the NEA building.[33] His wife reached the NEA building in a taxi and thereafter they left together. Later that evening, the police interviewed the appellant and his wife at their residence and explained that he had been approached by NEA officers earlier on.

The DJ's decision

13 In convicting the appellant, the DJ made the following key findings:

(a) PW1 Wyatt, PW2 Tay and PW3 Brenda were public servants executing their duties as public servants.[34]

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29 ROA at pp 45–46 (NE Day 1, p 28 at line 30 to p 29 at line 2).

30 ROA at p 46 (NE Day 1, p 29 at lines 8–23).

31 ROA at p 47 (NE Day 1, p 30 at lines 26–31); ROA at p 48 (NE Day 1, p 31 at lines 3–13); ROA at pp 213–214 (NE Day 2, p 65 at line 26 to p 66 at line 3).

32 ROA at p 48 (NE Day 1, p 31 at lines 19–30).

33 ROA at p 540 (NE Day 5, p 10 at lines 21–30).

34 GD at [65]–[70].

(b) The appellant knew that PW1 Wyatt, PW2 Tay and PW3 Brenda were NEA officers executing their duties as public servants.[35]

(c) The appellant pushed PW1 Wyatt in order to get away from PW1 Wyatt and PW2 Tay. The DJ accepted that PW1 Wyatt and PW2 Tay were credible witnesses and preferred their testimonies. The DJ also accepted PW3 Brenda's testimony that PW1 Wyatt had informed her about being pushed by the appellant on the day itself when they reunited at Chinatown to continue their enforcement duties.[36]

The criminal motion in CM 106/2021

14 Before addressing the arguments raised on appeal, I shall deal with the threshold issue of whether the appellant's application in CM 106/2021 for leave to adduce further evidence ("Fresh Evidence Application") and for the Prosecution to produce certain documents ("Disclosure Application") should have been allowed.

Fresh Evidence Application

15 The appellant filed the Fresh Evidence Application pursuant to s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), which provides as follows:

> **392.**—(1) In dealing with any appeal under this Part, the appellate court may, if it thinks additional evidence is *necessary*, either take such evidence itself or direct it to be taken by the trial court. [emphasis added]

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35 GD at paras 62, 64–70.

36 GD at para 74.

16 Under the Fresh Evidence Application, the appellant sought to adduce the following:

(a) the M1 mobile phone call log of the appellant's wife on the date of the offence, 29 January 2018 ("the Call Log");[37]

(b) two MOV file videos recorded on 7 September 2020 of: (i) the traffic light at the intersection of Paterson Road and Orchard Boulevard, adjacent to TwentyOne Angullia Park and across Wheelock Place, and (ii) the traffic light at the intersection of Paterson Road and Orchard Road, adjacent to Wheelock Place and across Shaw House ("the Videos");[38] and

(c) two screenshots of the Instagram account of PW1 Wyatt, showing that he was a bodybuilder ("the Instagram Screenshots").[39]

17 In *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 (at [14]), it was held that to ascertain whether fresh evidence sought to be introduced at the appellate stage was "necessary", the evidence must satisfy the conditions of non-availability, relevance and reliability set out in *Ladd v Marshall* [1954] 1 WLR 1489. First, it must be shown that the new evidence would not have been available for use at the trial even with reasonable diligence. Second, it must be relevant and have an important influence on the result of the case, though it need not be decisive. Third, the evidence must be apparently credible, though it need not be incontrovertible (see *Gaiyathiri d/o Murugayan v Public*

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37 Appellant's Skeletal Submissions dated 4 January 2022 ("Appellant's submissions") at para 1.1.

38 Appellant's submissions at paras 1.2–1.4.

39 Appellant's submissions at para 1.5.

Prosecutor [2022] SGCA 38). Notably, as elucidated in the case of *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544, in criminal proceedings, courts have placed more weight on the relevancy, more specifically, materiality, as well as the credibility, of the further evidence to be adduced (at [43]).

18 I was not persuaded that the conditions of relevance and reliability were made out for the following reasons:

(a) In respect of the Call Log, the Prosecution accepted that the appellant's phone call with his wife was initiated at 18:56:07 on 29 January 2018,[40] which was the fact that the appellant sought admission of the Call Log for. The Call Log was not necessary. It did not assist the appellant in undermining PW1 Wyatt's credibility on his version of events. To subvert PW1 Wyatt's testimony on the events that transpired, the appellant argued that it was "factually improbable"[41] for PW1 Wyatt, PW2 Tay and himself to have covered the alleged distance of 750m within the length of his call with his wife. However, the evidence suggested that the actual distance covered while the appellant was on the call with his wife was in fact shorter than that. The Call Log would therefore have little influence on the result of the case, and did not satisfy the condition of relevance.

(b) In respect of the Videos, the appellant sought to rely on the duration it took for the traffic lights at the first traffic intersection and the second traffic intersection to change to similarly highlight that it was

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40 Prosecution's submissions dated 4 January 2022 ("Prosecution's submissions") at para 116.

41 ROA at p 8 (Petition of Appeal ("POA") at para 4).

"factually improbable"[42] for PW1 Wyatt, PW2 Tay and the appellant to have covered the distance of 750m within a short span of 5 minutes and 35 seconds. However, PW1 Wyatt testified that the appellant had in fact made the phone call while they "waited at the traffic light … at Orchard Boulevard … towards Wheelock Place" (*ie*, the first traffic intersection).[43] Therefore, the distance travelled by them within the relevant time period would have been shorter than 750m. The Videos were thus not relevant as they would not have assisted the appellant's case in any event. Furthermore, the Videos were taken on 7 September 2020,[44] more than two and a half years after the incident. They were unreliable as there was no evidence that the timing of the traffic lights would have remained the same given the lapse of time, and in any case, the conditions of the incident would not be accurately reflected in the Videos.

(c) In respect of the Instagram Screenshots, these were clearly irrelevant. The appellant sought to rely on the screenshots to show that PW1 Wyatt was a bodybuilder who could not have easily been pushed to the ground by the appellant, who described himself as being of an "average or below average build".[45] The appellant further claimed that the fact that he had managed to push PW1 Wyatt to the ground also "provides context" that he was not in full control of his mental faculties at the time.[46] I agreed with the Prosecution that the Instagram

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42 ROA at p 8 (Petition of Appeal ("POA") at para 4).

43 ROA at p 44 (NE Day 1 at p 26, lines 17–21).

44 Appellant's submissions at para 42.

45 Appellant's submissions at para 55.

46 Appellant's submissions at para 25.

Screenshots were irrelevant and the appellant's line of reasoning in this regard was wholly speculative. Furthermore, the Instagram Screenshots were not necessary for the determination of the essential issues in the appeal as PW1 Wyatt had already accounted for how he fell and the force with which the appellant had allegedly used to push him.[47]

19 As such, the appellant's Fresh Evidence Application was dismissed.

Disclosure Application

20 The appellant further applied for the Prosecution to be ordered to produce the following documents:

(a) the First Information Report lodged by the appellant's wife on 29 January 2018 at approximately 6.58pm (the "FIR");[48]

(b) the Internal Incident Report ("IIR") that PW1 Wyatt sent to his duty manager on 29 January 2018;[49]

(c) all statements given by PW1 Wyatt under s 22 of the CPC ("PW1 Wyatt's Statements");[50]

(d) all statements given by PW2 Tay under s 22 of the CPC ("PW2 Tay's Statements");[51] and

(e) police pocketbook statements recorded by the police officers who spoke to PW1 Wyatt and PW2 Tay at the NEA building

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47 ROA at p 84–86 (NE Day 1 p 69–72 at line 28 to line 3).

48 Appellant's submissions at para 22.

49 Appellant's submissions at para 23.

50 Appellant's submissions at para 24.

51 Appellant's submissions at para 24.

carpark, and police pocketbook statements recorded by the police officers who spoke to the appellant at his residence on 29 January 2018 ("Pocketbook Statements").[52]

21 In *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*"), it was established that the Prosecution has a common law duty to disclose unused material which tends to undermine its case or strengthen the Defence's case (at [113]). There is a presumption that the Prosecution has fulfilled its *Kadar* obligations, but this presumption may be rebutted where the Defence is able to show reasonable grounds for belief that the Prosecution has failed to comply with its *Kadar* obligations. If the court is satisfied that there exist reasonable grounds to believe that the Prosecution has in its possession material which should be disclosed, then the presumption is displaced and the Prosecution has to show or prove to the court that it has not, in fact, breached its *Kadar* obligations (see *Lee Siew Boon Winston v Public Prosecutor* [2015] 4 SLR 1184 at [167]–[168]).

22 In my view, the appellant failed to show that there were reasonable grounds to believe that the Prosecution had possession of material which should be disclosed:

(a) In respect of the FIR, it was open to the appellant to apply for the FIR online. The police had also replied to the appellant's solicitors providing the FIR reference number.[53]

(b) In respect of the IIR, the appellant was of the view that the IIR would show whether "PW1 was consistent in his testimony at the trial

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52 Appellant's submissions at para 24.

53 Prosecution's submissions at para 126.

below",[54] thus reducing the credibility of his evidence. However, this was bare speculation – the appellant had not pointed to any material inconsistency which could form the basis for such an application.

(c) In respect of PW1 Wyatt's Statements, the appellant submitted that PW1 Wyatt was "likely to have been inconsistent" in his statements.[55] The appellant pointed to the Case for the Prosecution, which had stated that the appellant caused PW1 to suffer a neck strain, and PW1 Wyatt's First Information Report, where he also stated that he suffered from pain for two days. At trial, PW1 Wyatt then stated that he did not suffer any injury.[56] However, I noted that PW1 Wyatt's evidence at trial was that he had not felt injured at that point in time, although the next day he *did* feel pain,[57] and so he had decided to visit a doctor for this pain on 31 January 2018 as the pain had persisted.[58] Thus, the applicant failed to prove that PW1 Wyatt's evidence was inconsistent on this point and on any other material point.

(d) In respect of PW2 Tay's Statements, the appellant submitted that PW2 Tay's statements were likely inconsistent with his testimony at trial and would go towards impeaching his credibility.[59] The appellant pointed to the inconsistencies between PW1 Wyatt's and PW2 Tay's testimonies as to the duration of the push and PW2 Tay's inability to remember whether PW1 Wyatt and the appellant had boarded a bus at

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54 Appellant's submissions at para 58.

55 Appellant's submissions at para 62.

56 ROA at p 176 (NE Day 2 at p 28, lines 21–23).

57 ROA at p 50 (NE Day 1 at p 33, lines 16–31).

58 ROA at p 110 (NE Day 1 at p 93, lines 31–32).

59 Appellant's submissions at para 63.

Paterson Road. However, in my view, PW2 Tay's account at trial was internally consistent. As such, there was no basis for the application for production of PW2 Tay's Statements.

(e) In respect of the Pocketbook Statements, the Prosecution had clarified that they were not in possession of the same as no such statements were recorded.[60]

23 The appellant's Disclosure Application was dismissed. CM 106/2021 was therefore dismissed in its entirety. I now turn to the appellant's appeal against his conviction and sentence.

The parties' cases on appeal

The appellant's case

24 The appellant submitted that the DJ had failed to consider that PW1 Wyatt had collided with a passer-by on the day of the alleged incident.[61] The appellant pointed to the fact that PW1 Wyatt had admitted that he had collided with a passer-by while in pursuit of the appellant, and the DJ had failed to consider whether PW1 Wyatt could have confused the appellant's alleged push with his collision with the said passer-by.[62] PW1 Wyatt's and PW2 Tay's account of the push was also factually improbable as it was "likely to be impossible" for PW1 Wyatt, PW2 Tay and the appellant to have covered the distance of 750m from the Bus Stop to the traffic light across Shaw House within 5 minutes and 35 seconds.[63] Furthermore, PW1 Wyatt's testimony and

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60 Prosecution's submissions at para 128.

61 Appellant's submissions at para 84.

62 Appellant's submissions at para 84.

63 Appellant's submissions at para 85.

PW2 Tay's testimony of the details of the push were materially different in whether there was any "hustling" and the duration of the push.[64] Given the discrepancies in their evidence, PW1 Wyatt's account of the pushing incident was not unusually convincing.

25 The appellant also submitted that PW1 Wyatt and PW2 Tay were not credible witnesses.[65] The evidence that they presented at trial was inconsistent with what was stated in their First Information Reports.[66]

26 The appellant further submitted that the DJ had erred in finding that the appellant himself was not a credible witness.[67] The appellant was drinking with his client when the NEA officers first approached him and it was not unreasonable that he had not considered asking his companions or the staff in the restaurant for help at the time.[68] He initially thought he could manage the matter himself but when he felt that he could no longer do so, he called his wife for assistance.[69] The DJ should also have placed more weight on the appellant's explanation concerning how he had viewed the NEA officers as "scammers", as he was unconvinced that the NEA officers were genuine NEA officers while he was being pursued.[70]

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64 Appellant's submissions at para 87.

65 Appellant's submissions at para 89.

66 Appellant's submissions at para 89.

67 Appellant's submissions at para 92.

68 Appellant's submissions at para 92.

69 Appellant's submissions at para 92.

70 Appellant's submissions at para 93.

27 In respect of the appeal against sentence, the appellant submitted that the sentence of four weeks' imprisonment was manifestly excessive.[71] The appellant submitted, *inter alia*, that the DJ had: (a) failed to give weight to the appellant's psychiatric report, (b) failed to adequately consider the relevant precedents where fines were imposed for similar offences, and (c) incorrectly imposed an uplift of one week's imprisonment above what the DJ had determined to be the indicative starting sentence.[72]

The Prosecution's case

28 Firstly, the Prosecution submitted that the appellant had objective knowledge that PW1 Wyatt and his colleagues were NEA officers as all three of them had identified themselves to him as enforcement officers from the NEA by showing him their authority cards.[73] PW1 Wyatt had also testified that he translated what "NEA" meant in Mandarin to the appellant and wore his authority card around his neck thereafter.[74] Furthermore, the appellant did not seek verification of PW1 Wyatt's credentials in the presence of his companions or the restaurant staff when he was first approached, did not use his mobile phone to call others for help when he was allowed to return to the restaurant to collect his backpack and did not verify the identities of the NEA officers after he reached the NEA building.[75] This was thus inconsistent with the appellant's contention that he thought he was dealing with "scammers", and instead painted a picture of an individual who was, as the DJ had found, "very much aware of

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71 ROA at p 12 (POA at para 15); Appellant's submissions at para 96.

72 Appellant's submissions at paras 96.1, 96.3 and 96.6.

73 Prosecution's submissions at paras 47–48.

74 Prosecution's submissions at para 48.

75 Prosecution's submissions at para 42.

the littering offence that he had committed".[76] The evidence thus clearly showed that the appellant was attempting to evade the consequences of his littering offence.

29 Secondly, the Prosecution submitted that the appellant had pushed PW1 Wyatt.[77] The DJ had rightly found that PW1 Wyatt was a credible witness as his testimony was internally consistent across his recollection of the incident on the day itself, to the police and during the trial.[78] He also maintained his testimony under cross-examination.[79] In respect of the appellant's contention that PW1 Wyatt might have confused his collision with a passer-by with the alleged push, the Prosecution pointed out that the DJ had considered that PW1 Wyatt had knocked into a passer-by near the overhead bridge to Far East Plaza, rather than along Paterson Road, which was where the alleged push had taken place.[80] This account was also corroborated by PW2 Tay,[81] whose account was both internally consistent and externally consistent with PW1 Wyatt's account.[82] As such, the appellant's claim that PW1 Wyatt could have "confused" a collision with a passer-by with the appellant's push was groundless.

30 While the evidence of PW1 Wyatt and PW2 Tay would have more than sufficed, the DJ also considered PW3 Brenda's evidence that she was told by PW1 Wyatt on the day of the incident itself that he was pushed by the

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76 Prosecution's submissions at para 42; GD at para 70(b).

77 Prosecution's submissions at para 52.

78 Prosecution's submissions at para 56.

79 Prosecution's submissions at para 58.

80 Prosecution's submissions at para 62.

81 Prosecution's submissions at para 62.

82 Prosecution's submissions at para 79.

appellant.[83] The appellant's contention that it was factually improbable for PW1 Wyatt and the appellant to have covered a distance of 750m within 5 minutes and 35 seconds was also premised on an exaggeration of the distance actually travelled between PW1 Wyatt and the appellant, and therefore ought to be disregarded.[84] The appellant's attempts to exaggerate the distance travelled also pointed towards the appellant's lack of credibility.[85]

Issues to be determined

31 In respect of the appeal against conviction, the two key issues to be considered were:

(a) whether the appellant had the knowledge that PW1 Wyatt, PW2 Tay and PW3 Brenda were public servants; and

(b) whether the appellant had pushed PW1 Wyatt at or about 6.50pm along Paterson Road on the day in question.

32 In respect of the appeal against sentence, the sole issue to be considered was whether the sentence of four weeks' imprisonment was manifestly excessive in the circumstances of the present case.

Decision

Did the appellant know that the NEA officers were public servants?

33 To determine the knowledge required of an accused person in the context of a s 332 of the Penal Code offence, the case of *Public Prosecutor v*

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83 Prosecution's submissions at para 91.

84 Prosecution's submissions at para 63.

85 Prosecution's submissions at para 67.

Yeo Ek Boon Jeffrey and another matter [2018] 3 SLR 1080 ("*Yeo Ek Boon Jeffrey*") is instructive. In that case, Tay Yong Kwang JA stated (at [35]) that:

> Although knowledge that the victim is a public servant going about his duties is not stated explicitly in s 332, it cannot be right that someone who hit another person without even knowing that that person was a public servant going about his duties would be guilty of an offence under s 332. However, the *knowledge required is objective and not subjective knowledge*. Therefore, if an ordinary person would have such knowledge *in the circumstances of the case*, it is not open to the accused person to claim that he did not know. [emphasis added]

34 It is thus clear that the test of an accused person's knowledge is an objective test. What is pertinent to determine the appellant's state of mind is an ordinary person's knowledge in the circumstances of the case. Although the DJ did not cite any authority, in referring to the Prosecution's submission for the appellant's knowledge to be evaluated by reference to the "ordinary person in the accused's shoes", the DJ was cognisant of the principle as articulated in *Yeo Ek Boon Jeffrey*. As such, that the appellant could have been tipsy, had an acute stress reaction or had any irrational fears were rightly not taken into account.

35 The Prosecution bears the burden of proving that an accused person did have such knowledge. In the present case, the appellant claimed that he genuinely believed that the NEA officers were not public servants, even though he "[could] not be 100% certain these people (*ie*, the NEA officers) [were] scammers".[86] The "ordinary person" test would require the court to assess whether the appellant's knowledge *in the circumstances of the case* was reasonable. The inquiry can be framed thus: should an ordinary person in the

86 ROA at p 887 (Exhibit D7-T-2 at para 6).

appellant's circumstances be expected to have known that the NEA officers were indeed public servants?

36 According to the appellant, the NEA officers only "flashed" their authority cards and they were not in uniform.[87] He also did not expect enforcement officers to be graduates. The NEA officers knew little about water treatment, which was what he understood the NEA to be responsible for, having mistaken them for the Public Utilities Board.[88] They agreed to follow him on the bus to Marriott Hotel and continued to follow him when he alighted. They then boarded two other buses with him and followed him further before they could no longer keep up with him. The appellant claims that all this only further stoked his suspicions and added to his confusion and anxiety.

37 However, without wishing to make light of the incident, the events that transpired after the appellant was approached by the NEA officers that day, with the ensuing twists and turns, appear almost farcical. From the perspective of an ordinary person in the appellant's circumstances, the NEA officers' actions cumulatively demonstrate that they were indeed public servants in the course of executing their duties. Re-examining the undisputed and uncontroversial facts, the NEA officers had identified themselves as law enforcement officers and informed the appellant that he was spotted littering. They flashed their authority cards, but the appellant refused to show them his NRIC. They called the police and asked the appellant to wait with them for the police to arrive. They also offered to walk with the appellant to the NEA headquarters to verify their identities. These facts demonstrate that they had repeatedly assured the

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87 ROA at p 448 (NE Day 4, p 38 at lines 22–24); ROA at p 536 (NE Day 5, p 6 at lines 1–2).

88 GD at para 44; ROA at p 539 (NE Day 5, p 9 at lines 20–22).

appellant of their identities, while giving the appellant several opportunities to conclusively verify their identities.

38 Considering these largely uncontroversial facts as a whole, they would suggest that the appellant was attempting to evade the consequences of his littering offence and to shake the NEA officers off when the opportunity arose, after leading them on what the Prosecution and the DJ termed "a wild goose chase".[89] The appellant had after all lived in Singapore for some two decades. He ought to be reasonably familiar with local norms. It was reasonable to expect that he should be aware that not all enforcement officers are uniformed officers, even if it might not be reasonable to expect an ordinary person to be aware that the NEA was the agency in charge of littering enforcement. If he had indeed been highly suspicious of the NEA officers, he could have easily sought to verify that they were indeed public servants, but he never did so at any point. If he had harboured real doubts or fears that he was being scammed or kidnapped, the natural and obvious reaction would have been to notify the police immediately or to seek assistance from other persons in the vicinity. He did not do so. Instead, he decided to "play with them"[90] to buy time. He lied to the NEA officers about his purported status as a tourist and told them that his passport was in his hotel room. He also led the three officers on bus rides towards Marriott Hotel at Orchard Road where he purportedly stayed.

39 I further noted that the appellant had eventually instructed his wife to call the police, but within seconds, changed his mind and asked her to call the Chinese Embassy instead. I accepted that calling the authorities for aid does not seem at first blush to be consistent with how a person intent on evading lawful

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89 GD at para 35(c).

90 ROA at p 377 (NE Day 3, p 76 at lines 20–24).

enforcement action would react. Nevertheless, this did not preclude another equally if not more plausible explanation, namely that he had done so to justify his evading enforcement action through maintaining the position that he had genuinely believed that he was being scammed.

40 It should be noted that the appellant called his wife near the end of an almost hour-long chase, during which the NEA officers had repeatedly and through various means communicated to the appellant that they were public servants who were carrying out their official duties. Moreover, he had already been told that the officers had called the police for assistance as he was uncooperative. Throughout this chase, the appellant also had several opportunities to conclusively verify their identities, but chose not to. I further noted that the appellant testified to being in "shock" when he witnessed at least one bus driver complying with PW1 Wyatt's instructions to stop the bus, making him wonder how the NEA officers were "so powerful".[91] This should have objectively alerted him to the fact that the officers were genuine NEA officers who were carrying out their lawful duties. Considering the facts as a whole, the appellant was fully aware of the authority of the NEA officers. In my view, his instruction to his wife to call the police was designed to prop up his "scammer" defence.

41 The DJ rejected the appellant's defence that he had genuinely believed that he was the target of a scam operation or that he was being kidnapped. The correctness of the DJ's decision was difficult to challenge. An ordinary person in the appellant's position would not have had reasonable grounds to question the NEA officers' authority since they had properly identified themselves to him. More so, an ordinary person in the appellant's position would not have

91 ROA at p 389 (NE Day 3, p 88 at lines 8–18).

harboured such an irrational belief that he was being scammed and kidnapped, or to have theorised that his best defence was to lead them on a wild goose chase based on a trumped-up tale of being a tourist staying at the Marriott Hotel.

42 I accepted that the DJ correctly found that there was no reasonable doubt as to whether the appellant knew (or ought to have known) that the NEA officers were public servants executing duties as such. Like the DJ, I found it difficult to accept the highly irrational and unusual nature of the appellant's alleged self-induced suspicions.

Did the appellant push PW1 Wyatt at or about 6.50pm along Paterson Road?

43 I was of the view that the DJ was fully justified in finding that the appellant had pushed PW1 Wyatt at or about 6.50pm along Paterson Road on the day in question.

Credibility of PW1 Wyatt's testimony

44 In my view, the DJ rightly found that PW1 Wyatt's testimony was credible and consistent in the material elements. Under cross-examination, PW1 Wyatt remained resolute that he had moved in front of the appellant in an effort to block the appellant's path before he was pushed. He was pushed *from the back* between the neck and the shoulder and thereupon he fell forward despite tightening his core muscles, illustrating the force with which he was pushed by the appellant.

45 Furthermore, PW1 Wyatt's testimony was supported by PW2 Tay's observations. PW2 Tay had personally witnessed the push. At trial, he testified that he was following behind PW1 Wyatt and the appellant, and he saw that the

appellant had pushed PW1 Wyatt on his left back, causing PW1 Wyatt to fall.[92] PW2 Tay testified that this happened after the Bus Stop, which corroborated PW1 Wyatt's testimony of the location where the push had taken place.[93] In my view, the DJ was justified in preferring PW1 Wyatt's evidence over that of the appellant. There was nothing in the DJ's finding on this crucial fact that was plainly wrong or against the weight of the evidence.

46 The appellant further claimed that the accounts of PW1 Wyatt and PW2 Tay were factually improbable. He contended that PW1 Wyatt and the appellant could not have covered the distance of 750m between the Bus Stop and Shaw House within 5 minutes and 35 seconds, which was the time between the end of PW2 Tay's call to the police at the Bus Stop (at 18:50:32) and the start of the appellant's phone call to his wife allegedly at Shaw House (at 18:56:07).

47 I accepted the Prosecution's submission that the appellant had exaggerated the distance actually travelled by PW1 Wyatt and the appellant. PW1 Wyatt testified that the appellant had initiated the phone call to his wife *before* they reached Shaw House, while they were waiting at the traffic light at Orchard Boulevard towards Wheelock Place,[94] and that the appellant had already ended the phone call when they were near the traffic light from Wheelock Place to Shaw House. PW2 Tay also testified that the phone call took place before they reached Shaw House.[95] I noted that the appellant himself

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92 ROA at p 209 (NE Day 2 at p 61, lines 3–9 and lines 17–23).

93 ROA at p 684 (Exhibit P4) and ROA at p 685 (Exhibit P5).

94 ROA at p 44 (NE Day 1 at p 27, lines 15–21).

95 ROA at p 215 (NE Day 2 at p 66, lines 4–9).

appeared to have conceded that the phone call took place before they reached Shaw House, thus corroborating PW1 Wyatt's and PW2 Tay's accounts.[96]

The appellant's claims that no push had occurred

48 The appellant made further claims in support of his account that no push had occurred. I found his claims to be without merit. I shall briefly address the salient aspects of his claims.

49 Firstly, while the appellant claimed that PW1 Wyatt had collided heavily into an oncoming passer-by along Paterson Road, this was wholly at odds with PW1 Wyatt's evidence that he had fallen to the ground after he was pushed *from behind*. The appellant's claim also completely glossed over PW1 Wyatt's unwavering evidence that no collision with any passer-by had taken place along Paterson Road, but one did occur at a different location nearer to Far East Plaza and just before Goodwood Park Hotel. PW2 Tay's evidence corroborated this. The appellant submitted that the collision with the said passer-by might have caused PW1 Wyatt to be confused with an alleged push by the appellant. This was entirely speculative, and the appellant had in fact conceded that he did not personally witness the collision, but this was merely his "theoretical analysis" of what could have happened.[97]

50 In addition, the appellant claimed that he could not have pushed PW1 Wyatt because PW1 Wyatt did not suffer any abrasions. However, PW1 Wyatt explained that the pavement was a normal concrete pavement,[98] he

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96 ROA at p 276 (NE Day 2 at p 128, lines 9–32).

97 ROA at p 477 (NE for Day 4, p 67 at lines 17–29).

98 ROA at p 41 (NE for Day 1, p 24 at lines 9–14).

was wearing jeans[99] and he did not suffer any open cuts or abrasions as his skin was relatively thick.[100] It was not invariably the case that an individual who falls on the pavement would sustain abrasions, cuts or scratches.

Was the sentence of four weeks' imprisonment manifestly excessive?

51 Turning to the appeal against sentence, I found that the total sentence of four weeks' imprisonment was not manifestly excessive.

52 Firstly, the DJ rightly gave no weight to the psychiatric report, prepared on 21 October 2020 by Dr Ung Eng Khean ("Dr Ung"),[101] stating that the appellant was suffering from an acute stress reaction. It should be noted that the report was prepared retrospectively, more than two years after the incident itself. Dr Ung's assessment was also premised on the appellant's self-reported account of the incident. I accepted that the DJ had correctly rejected the appellant's account, and as such there was no reliable basis for Dr Ung's assessment.

53 In any case, despite the appellant's repeated claims that he had acted in a heightened state of panic and confusion,[102] he certainly had the presence of mind to devise various ways to try to give the NEA officers the slip. The fundamental premise of the appellant's reliance on his acute stress reaction was that his actions were driven by his irrational perceptions. While it would appear that he acted spontaneously, his actions were not purely haphazard or random. His pushing of PW1 Wyatt was not done in a momentary lapse of judgment. Rather, it was the culmination of his efforts to get away from the NEA officers.

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99 ROA at p 41 (NE for Day 1, p 41 at lines 21–32).

100 ROA at p 86 (NE for Day 1, p 69 at lines 3–4).

101 ROA at p 1030.

102 ROA at pp 1000–1001 (Exhibit F at paras 17–18).

Moreover, it was more plausible that he had asked his wife to call the police and the Chinese Embassy to bolster his false claim that there were bogus officers out to scam or kidnap him, rather than face up to the fact that he had endeavoured to evade enforcement action.

54 Secondly, I was of the view that the DJ had properly applied the framework in *Aw Soy Tee v Public Prosecutor* [2020] 5 SLR 453 ("*Aw Soy Tee*") (at [30]) to the present case. It was not disputed that this case fell within Category 1 of the sentencing framework enumerated in *Aw Soy Tee*. In assessing the harm and culpability of an offender, courts may have regard to the factors enumerated in *Yeo Ek Boon Jeffrey* at [60]. In the present case, the appellant had clearly caused harm. His offence resulted in PW1 Wyatt falling to the ground and suffering some pain in his back. In the case of *Public Prosecutor v Loh Chee Wah* [2020] SGDC 221, the court observed that for s 353 of the Penal Code offences, where there is a direct physical act, for example, a push, the typical sentencing range is between three to five weeks' imprisonment (at [132]). The NEA officers were also clearly obstructed from carrying out their duties due to the appellant's non-compliance.

55 Furthermore, there were several culpability-enhancing factors. The appellant had demonstrated contempt for authority, lying to the NEA officers about his citizenship status and leading them on a protracted chase from Chinatown to the Orchard area in a prolonged effort to evade enforcement action.[103] The appellant had also acted with premeditation, evidenced by his intention to "play with [the NEA officers]" and to "delay time".[104]

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103 GD at para 108.

104 ROA at p 377 (NE for Day 3, p 76 at lines 9–24).

56 The appellant relied primarily on *Public Prosecutor v An Heejung* [2015] SGDC 59 ("*An Heejung*") and *Public Prosecutor v Shalaan s/o Sukumaran* [2020] SGDC 149 ("*Shalaan*") in support of his argument that a fine should be imposed instead of a custodial sentence. However, as the DJ rightly found, these cases were distinguishable from the present case. In both cases, the accused persons had pleaded guilty. In the case of *An Heejung,* the accused was not a habitual drinker and he had no recollection of the events of the material time as he was highly inebriated. The court assessed that he had acted "completely out of his character" and that what had occurred was a one-off isolated incident (at [29]). In the case of *Shalaan*, there was no deliberate defiance of authority as the accused had pushed the police officer in the middle of a heated fight which the accused person was attempting to break up (at [26] and [38]). He was not attempting to evade apprehension. Both the harm and culpability in the present case were considerably higher, as he had not only pushed PW1 Wyatt with sufficient force to cause him to fall to the ground, but he had also consciously acted in prolonged contempt of the NEA officers' authority.

57 Accordingly, I agreed with the DJ that the custodial threshold was crossed in this case. As there were no significant mitigating factors, I was not persuaded that the sentence of four weeks' imprisonment was manifestly excessive. The appellant had clearly intended to lead the NEA officers on a time-wasting trip from Chinatown to Orchard Road and thereafter in the direction of the NEA building, where he could easily have lodged a complaint or sought to verify their identities. The fact that he was told that the NEA officers had called the police and were apparently prepared to follow him all the way to the NEA building should also have informed him that they could not possibly have been scammers or kidnappers.

Conclusion

58 In conclusion, I agreed with the DJ's findings that the appellant's actions were all part of his planned intent to evade enforcement action. I did not see any reason to interfere with the DJ's decision to impose a one-week uplift to the indicative sentence of three weeks' imprisonment. The appeals against conviction and sentence were therefore dismissed.

See Kee Oon
Judge of the High Court

Foo Yu Kang Wilson (Fervent Chambers LLC) for the appellant and applicant;
Niranjan Ranjakunalan (Attorney-General's Chambers) for the respondent.