Public Prosecutor v Loqmanul Hakim bin Buang
[2007] SGHC 159

Case Number : MA 12/2007

Decision Date : 24 September 2007

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Vincent Leow (Attorney-General's Chambers) for the Prosecution; The respondent in person

Parties : Public Prosecutor — Loqmanul Hakim bin Buang

Criminal Procedure and Sentencing – Sentencing – Principles – Theft committed by CISCO police officer – Whether weight should be accorded to fact that accused committed offence while in uniform and carrying lethal weapon

Criminal Procedure and Sentencing – Sentencing – Retribution in sentencing – Rationale for imposing more severe sentence for offence committed whilst on bail

Criminal Procedure and Sentencing – Sentencing – Whether principle of specific deterrence relevant in sentencing – Relevance of general deterrence

24 September 2007

V K Rajah JA:

Background

1 Law enforcement and security agencies rightly receive a large measure of credit for the low crime rate that Singapore presently enjoys. Affirmation of positive international recognition has once again been accorded to Singapore's law enforcement agencies in the recent Political & Economic Risk Consultancy Ltd ("PERC"), *Comparative Country Risk Report 2007* (February 2007) ("*PERC Report*"), at p 21, acknowledging Singapore as having the lowest rate of crime threats against persons and property in the Asia-Pacific region.

2 Underlying such a positive assessment is the prevalent belief and expectation that those responsible for security enforcement in Singapore are disciplined, knowledgeable and take their mission of upholding the law conscientiously. Indeed, the actuality of such a positive perception of the domestic law enforcement agencies has been also manifested in the same *PERC Report* ([1] *supra*) where the Singapore Police Force is described as being "no-nonsense" (at p 22) and its officers, found to be "well trained, very professional and *well respected* by the local population" [emphasis added] (at p 51).

3 Needless to say, this hard won reputation of law enforcement and security agencies cannot be taken for granted. It has to be jealously protected. If and when their personnel break the law, they must be punished appropriately – in particular, in cases where such personnel abuse the colour of their office, severe punishment may be necessary so as to adequately reflect the damage that may have been inflicted and/or sustained to the standing of all other law enforcement personnel and the institutions they represent. The instant case represents one of those unhappy instances.

4 This matter involves certain serious and rather inexplicable indiscretions by an officer formerly

employed by Certis CISCO Security Pte Ltd (formerly known as CISCO Security Pte Ltd) ("CISCO"). CISCO, the largest auxiliary police force in Singapore, is one of the three commercial security companies that are authorised to provide armed security officers. Its officers are licensed to carry arms if they are necessary for discharge of their duties. CISCO asserts in its website that their auxiliary police services "protect … assets and premises from danger and threats" and their presence "deter crimes from occurring and keep lives and assets safe". (see<http://www.certissecurity.com/sg/Business/manpower aps.php?pg=1&subpg=2> accessed on 24 September 2007). Indeed, I should stress that although CISCO is presently not technically part of the Singapore Police Force, any suggestion that their delinquent officers should be treated less severely than police officers from the Singapore Police Force would not be countenanced, given their generally parallel duties: indeed, pursuant to s 86(1) of the Police Force Act (Cap 235, 2006 Rev Ed), the duties of auxiliary officers (such as those from CISCO) in protecting commercial organisations appear to be broadly similar to the conventional duties that were originally undertaken directly by the police officers from the Singapore Police Force. It would also be important to point out that unlike most other private security firms, CISCO auxiliary police officers wear uniforms that look similar to those worn by regular police officers even though the insignia is now different. Nonetheless, for completeness sake, I should mention that there is an appreciable distinction between the two, in that "the powers of a police officer may only be exercised by an auxiliary police officer when he is on official duty in the course of performing his duties": see Powers, Privileges and Immunities of Auxiliary Police Officers (Cap 235, N 6, 2006 Rev Ed). It is apposite to reproduce in full the entirety of this declaration:

> The Commissioner of Police, has conferred on every auxiliary police officer appointed under section 92 (1) or (2) of the Police Force Act all the powers, privileges and immunities of a police officer of corresponding rank, subject to the following limitations:
>
> > (*a*) an auxiliary police officer shall not have the powers of investigation of a police officer under Part V of the Criminal Procedure Code (Cap. 68);
> >
> > *(b) the powers of a police officer may only be exercised by an auxiliary police officer when he is on official duty and in the course of performing his duties; and*
> >
> > *(c)* an auxiliary police officer shall not exercise any powers of a police officer whilst he is undergoing the Auxiliary Police Officer Basic Course.
>
> [emphasis added]

The facts

5 The respondent, Loqmanul Hakim bin Buang ("the accused") pleaded guilty to three separate charges of theft under s 380 of the Penal Code (Cap 224, 1985 Rev Ed) ("the Penal Code") that were committed on three separate occasions between 27 October 2006 and 14 November 2006. The district judge sentenced the accused to ten weeks' imprisonment in respect of the first charge, four weeks' imprisonment in respect of the second charge and two weeks' imprisonment in respect of the third, with the two lengthier sentences being ordered to run consecutively. The Public Prosecutor ("the Prosecution") appealed against the sentences that were imposed by the district court on the ground that they were manifestly inadequate.

6 I should mention at this juncture that although the Prosecution's appeal was, technically speaking, in respect of the global sentence (of fourteen weeks' imprisonment) that had been pronounced by the district judge, its principal complaint was in relation to the sentence given in

relation to the first charge (*ie*, the third theft). At the conclusion of the hearing, I allowed the Prosecution's appeal and increased the sentence in respect of the first charge to eighteen months' imprisonment and ordered it to run consecutively to the third charge, with the sentence in respect of the second charge to run concurrently. The accused would therefore have to serve a cumulative sentence of imprisonment of 18 months and two weeks, in substitution of the original term of fourteen weeks. I now set out the reasons for my decision in full.

7 The facts that gave rise to this appeal are uncontroversial. The accused is a 23-year-old male who was, at all material times, a CISCO auxiliary police officer holding the rank of police constable. On 27 October 2006, the accused entered Sheng Siong Supermarket Pte Ltd at Yuan Ching Road ("the Yuan Ching Road Supermarket") and openly removed two boxes, each containing a portable DVD player worth some $249. Even though his actions were captured on the CCTV surveillance cameras, the accused was able to leave the supermarket without paying for the two items. He later proceeded to sell these items at the Sungei Road flea market. This particular incident formed the subject matter of the third charge against the accused, for which the accused was sentenced by the district judge to two weeks' imprisonment.

8 Perhaps emboldened by his earlier success, on 30 October 2006, the accused, accompanied by an accomplice, one Mohammad Nurzaman bin Mansor, proceeded to another Sheng Siong supermarket outlet, this time the branch located at Ten Mile Junction. There, he attempted to remove a television set valued at $1,399 without effecting payment. Unlike the previous occasion, however, this theft did not go unnoticed. Confronted by a store supervisor just outside the supermarket, the accused and his accomplice promptly abandoned the television set and fled on his motorcycle. The accused was eventually tracked down by the police and apprehended on 6 November 2006. After preliminary investigations had been completed that very same day, the accused was released on station bail. This incident formed the subject matter of the second charge against the accused, for which he received a sentence of four weeks' imprisonment.

9 One would have thought that after being caught red-handed in the commission of the theft on 30 October 2006, and having been placed on bail, the accused would have been concerned about the penal consequences of his conduct and be in a contrite frame of mind. Instead, on 14 November 2006, the accused brazenly decided to commit yet another theft. On that day, the accused was supposed to report for duty at 6.30am at the CISCO Auxiliary Police Jurong Division, but he reported for work at about 9.00 am instead, as he had initially assumed that it was his day off. Upon arrival at the CISCO Auxiliary Police Jurong Division, in accordance with the standard practice for deployment, the accused changed into his full CISCO gear and drew his arms and equipment, which included a revolver, bullets and a nightstick.

10 At about 10.00am, the accused was informed that he would be deployed at the POSB Branch in Clementi ("POSB Branch"). About an hour later, during the ride to the POSB Branch, the accused asked the driver to drop him off, close to the Yuan Ching Road Supermarket, on the pretext that he wanted to purchase some take-away food at a nearby food centre.

11 Once in the proximity of the Yuan Ching Road Supermarket, at or about 11.15am, the accused, clad in full CISCO official gear, proceeded to its electrical section. There he removed three DVD players, cumulatively valued at about $201. The accused then attempted to leave the supermarket with these unpaid items through the rear exit meant for the delivery of goods. An assistant supervisor ("the supervisor") of the supermarket observed the accused leaving with the items and demanded that he immediately stop. The accused ignored him and proceeded to leave the premises. The supervisor eventually caught up with the accused and demanded the production of the payment receipt. Refusing to accede to the request, the accused emphasised that he was "a police

officer". When he was requested to accompany the supervisor to the supermarket's office, the accused became uncooperative and struggled in an unsuccessful attempt to escape. Two other staff members then rushed to assist the supervisor in subduing the accused. Despite this, the accused continued to struggle. It took the combined efforts of five staff members to escort the accused back to the supermarket's office. Whilst being escorted, the accused repeatedly warned the staff "to be careful". Eventually, the police arrived and detained the accused. This particular incident formed the subject matter of the first charge of theft against the accused, for which he was sentenced to ten weeks' imprisonment.

Decision of the district court

12 The learned district judge prefaced his decision (*PP v Loqmanul Hakim bin Buang* [2007] SGDC 34) ("*GD*") by noting that in cases involving first-time theft offenders, where the property in question amounted to less than $5,000, the typical sanctions would be in the region of between a day's imprisonment coupled with a fine in less severe cases, to a short custodial sentence of up to two weeks' imprisonment in cases which incorporated *some* aggravating features.

13 The district judge quite correctly referred to some sentencing precedents that involved security personnel who committed thefts in the course of performing their assigned duties, namely *PP v Selvarajah a/l Ramasamy* (Unreported, Magistrate's Appeal No 64/95/01) and *Fackir Mohamed Shariff v PP* [2003] SGDC 189 ("*Fackir*"). However, he was of the view that these two cases were clearly *factually* distinguishable and therefore of little assistance. In his view, the offenders in those cases "had stolen in the very premises they were assigned to protect" (see *GD* at [19]). While this was not made explicit, it was clear that what the district judge had meant by suggesting that these cases were "clearly distinguishable" was that the scenario before him merited considerably less severe sentencing when viewed from that perspective alone. He also observed that the accused "had not acted under colour of office" to gain access into Sheng Siong's premises to commit any of the three thefts, and stressed that if it was otherwise, the "extremely egregious nature of the abuse of authority" (see *GD* at [16]) would have mandated a stricter stance in sentencing.

14 The district judge emphasised that many of the *perceived* aggravating factors should not, on closer scrutiny, be accorded significant weight in assessing the appropriate sanction to be meted out. For one, while the accused was scheduled to be on duty, and therefore armed, there was no suggestion that the accused had threatened to use his revolver. In a related vein, the learned district judge also felt that it would be far-fetched to infer that the statement by the accused for the employees of Sheng Siong "to be careful" (see [11] above) was indeed a "veiled threat" to use the revolver (see *GD* at [12]).

15 Turing next to the question of deterrence, the learned district judge felt that the *only* relevant consideration that arose in the factual matrix, *vis-à-vis* deterrence, was that of *general* deterrence. In his view, the efficacy of the other facet of deterrence, *ie*, *individual* or *specific* deterrence, was ameliorated by the fact that there was very little prospect of the accused committing such an offence again, as it was very unlikely that he would ever be able to find employment in a similar capacity. However, even when it came to *general* deterrence, the learned district judge appeared not to be impressed that it was a consideration of particular importance. Instead, he concluded that the essence of the Prosecution's arguments pressing for *general* deterrence were, when stripped of its verbiage, merely a thin guise for an appropriate sanction to be imposed under the distinct sentencing principle of *retribution* (see *GD* at [26]).

16 While the district judge agreed with the Prosecution that the value of the property was by no means insignificant, he also felt that it could not be said to be an unusually large amount either. In

the circumstances, the value of the items could not, *ipso facto*, amount to an aggravating factor on its own. As for the elements of premeditation and planning being potential aggravating factors, the learned district judge curiously made no finding on them; instead he merely noted that the entire matter had not been "particularly well-calculated", though I should add that he somewhat qualified this by observing that inept execution was no excuse for a botched crime (see *GD* at [30]).

17 In the final analysis, the district judge concluded that the usual sentencing norms for thefts under s 380 of the Penal Code (see [13] above) should be departed from *vis-à-vis* the first charge, since it was clearly in the public interest for the courts to "convey a clear message of disapprobation" (see *GD* at [28]). He determined that a custodial sentence just in excess of a term of three months' imprisonment would be appropriate for the said offence. Accordingly, he sentenced the accused to a total of 14 weeks' imprisonment. In arriving at such a determination, the learned district judge plainly appeared to have attempted to dovetail the sentence with the three-month sentence imposed in *Fackir* ([13] *supra*). However, he made no attempt to explain the rationale or the need for such consistency, perhaps because of his earlier observation that the case was not relevant in the sentencing exercise to be adopted on the facts before him (see *GD* at [33]).

The arguments on appeal

18 The Prosecution's arguments on appeal, were broadly similar to the arguments that had been earlier canvassed before the district judge. In essence, the arguments raised were three-fold and read as follows:

(a) that the district judge erred in failing to accord sufficient weight to the fact that the accused had committed the offence, while in uniform and carrying a lethal weapon;

(b) that the district judge erred in failing to consider that the accused faced three charges in relation to three identical offences, all committed in the short span of 18 days, and to exacerbate matters, while on bail; and

(c) that the district judge erred in failing to consider that the accused person had displayed no form of remorse, as evidenced by his *purported* lies in relation to his motives for committing the offences, as evidenced by his mitigation plea.

19 The accused, who appeared in person, did not seek to directly address any of these concerns, and instead, tendered a letter ("the letter") pleading for leniency. In essence, the letter purported to express the accused's remorse for the incident and reiterated that he had committed the offences so as to obtain money to repay a debt of $300 that was owing to a friend. The letter also alluded to the financial hardship that an increased sentence would invariably entail, pleading that his father had suffered a stroke during his current term of imprisonment and that he had, as the eldest child, a responsibility to shoulder the financial difficulties his family faced as a result.

Decision of this court

20 It should be plainly apparent from the earlier portrayal of the facts that this was clearly a highly unusual and perturbing case. Exacerbating matters was the rather unique pattern of offending by an auxiliary police officer.

Sentencing principles

21 I noted in *Tan Kay Beng v PP* [2006] 4 SLR 10 ("*Tan Kay Beng*") (at [29]):

> [I]n arriving at an appropriate sentence, a court should invariably take into account the sentencing considerations of deterrence, retribution, prevention and rehabilitation. It is however less often noted that these principles are not always complementary and indeed may even engender conflicting consequences when mechanically applied in the process of sentencing. In practice, judges often place emphasis on one or more sentencing considerations in preference to, and sometimes even to the exclusion of all the other remaining considerations. When this occurs, it is imperative for the court to adequately articulate the justification underpinning the sentence meted out and in particular to explicate its preference for certain particular sentencing considerations over others.

22 The reasoning for this is obvious. The application of sentencing principles to the factual matrix requires the judge to undertake a critical examination and evaluation of the matter to justify the legitimacy of the sentence passed. It is, after all, the court's reasoning that accords legitimacy to the sentence that is passed (see *eg*, *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653 ("*Angliss*") at [24]). While a judge must always remain sensitive to the facts of the case, this is not, all said and done, a *carte blanche* licence for a sentencing judge to pursue his own penal philosophies. As a leading academic (Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005)) ("*Ashworth*, 2005") correctly asserts (at pp 72–73):

> It is one thing to agree that judges should be left with discretion, so that they may adjust the sentence to fit the particular combination of facts in an individual case. It is quite another to suggest that judges should be free to choose what rationale of sentencing to adopt in particular cases or types of cases. Freedom to select from among the various rationales is a freedom to determine policy, not a freedom to respond to unusual combinations of facts. It is more of a licence to judges to pursue their own penal philosophies than an encouragement to respond sensitively to the facts of each case.

23 Given that the facts before me evidenced a series of thefts perpetrated by a police officer, albeit an auxiliary police officer, it was plain to me that the two main sentencing considerations relevant in fashioning an appropriate sanction would be that of deterrence and retribution.

Deterrence

24 The concept of deterrence, at its very heart, operates on the premise that criminals should be punished so that there would be less crime: see Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (Hill and Wang, 1976) at p 37. Briefly (for a detailed discourse, see *PP v Law Aik Meng* [2007] 2 SLR 814 ("*Law Aik Meng*") at [18]–[25]), deterrence may apply on two discrete levels: first, on the individual who committed the crime in question (*specific* deterrence), and second, on society at large (*general* deterrence). I now discuss each of these considerations in turn.

Specific deterrence

25 Specific deterrence, in essence, relates to the effect that punishment might have in persuading an accused to refrain from further unlawful conduct *by* the fashioning of an appropriate sentence that takes into account the nature of the offence and his peculiar disposition. This concept presupposes that if sufficient degree of unpleasantness and distress is visited on an accused through the imposed sanction, he/she will take steps to desist from crime in the future to avoid the distress and ignominy of *further punishment* in future. This principle represents the manifestation of the philosophical belief that the "experience of imprisonment [would] be so unpleasant that it [would] discourage the ex-prisoner from risking another term": see Nigel Walker & Nicola Padfield, *Sentencing: Theory, Law and Practice*, (Butterworths, 2nd Ed, 1996) ("*Padfield & Walker*, 1996") at p 146.

26 A central premise underpinning such a sentencing philosophy is a belief in the ability of the person concerned to make rational choices, whether in relation to current or future conduct. In this respect, it is not surprising that considerations of specific deterrence are especially significant in situations involving pre-meditated crimes: see *PP v Tan Fook Sum* [1999] 2 SLR 523 at 533, [18]. As a corollary, it should be similarly self-evident that in most, if not all situations involving factors outside the control of the accused, or where the accused acts on the basis of some irrational and uncontrollable impulse, specific deterrence would often be a less compelling, if not altogether irrelevant, consideration: see *PP v Aguilar Guen Garlejo* [2006] 3 SLR 247 at [44]; *PP v Lim Ah Liang* [2007] SGHC 34 at [40].

27 Returning to the relevant facts, it may be recalled that the district judge accorded little weight to the importance of specific deterrence, for, in his view, there was no prospect whatsoever of the accused being employed again in a similar capacity. Put another way, it would appear the district judge determined that as it was inconceivable that the accused could *ever* be employed as a uniformed officer, it would follow that he could *never again* commit a similar offence *in uniform*.

28 With respect, while I am in full agreement with the district judge that the accused would be unlikely to obtain gainful employment as a uniformed police officer in the future, I cannot agree that it must also inevitably follow that specific deterrence was no longer a relevant sentencing consideration.

29 When considering the applicability of specific deterrence as a sentencing tool, it is necessary for the court to take a holistic view of the deterrence that is intended to be instilled in the particular offender. As I indicated recently in *Law Aik Meng* ([24] *supra*), at [21]–[23], the principle of specific deterrence operates on the understanding that there would be the reduction of the possibility of recidivism through the prospect of having to experience a similar or more severe sanction. While it should be self-evident that a multitude of considerations would invariably come into play when considering the effect of *specific* deterrence in each particular individual, the real question that necessitates resolution would be whether a more severe sanction would discourage an accused from partaking again in any similar act, if not any future offending behaviour. Put simply, the question to be answered is a simple one: will an increased sentence reduce the propensity of the accused to risk further punishment through the commission of another crime?

30 Such a question, invariably, can only be answered in the context of the specific facts that are before the court. As no two situations are completely identical, the relevant factual considerations necessarily differ on a case-to-case basis. If for example, the accused before the sentencing court had been a person who was predisposed to committing thefts only because he was employed as a police officer, perhaps from a false sense of bravado or importance, then there might be some basis to query and analyse the propensity to reoffend, *in the particular context* of his employment as a police officer. Given that in such circumstances, the very propensity to reoffend is *inextricably interlinked* with the accused's employment as a police officer, it may plausibly be thought to be relevant in considering his future employment prospects in such a case.

31 The facts before me are, however, of a markedly different import, and thus encompassed very different considerations. This was quite evidently not a case in which the accused committed the offences *purely by virtue of his employment* as a policeman. On the contrary, given the fact that two of the three thefts were committed while he was attired *as a private citizen*, it was apparent that the accused's predisposition to committing petty thefts was quite independent of his employment. In the circumstances, the consideration of the applicability of specific deterrence takes on a more holistic ambit, namely, whether a longer term of incarceration would stop the accused from the commission of any future thefts (as opposed to future thefts *in uniform*). The district judge's

failure to acknowledge the relevance and impact of specific deterrence as a sentencing consideration was plainly mistaken. On that basis, coupled with the fact that the offences had been premeditated, albeit badly planned and executed, I agreed with the Prosecution that the district judge erred in watering down the relevance and importance of *specific* deterrence as a sentencing consideration.

General deterrence

32 The decision in *Law Aik Meng* ([24] *supra*) considers in some depth (at [24]–[25]) the types of offences and the circumstances when considerations of general deterrence may assume particular importance. It is unnecessary to reprise them here again. What merits some emphasis in the present context, however, is the observation made at [26] of that case, where it was noted that such broadly defined categories are not mutually exclusive and that where the circumstances of the case engage more than one of the categories of situations, that would conduce towards the imposition of an extended term of incarceration. In this regard, I should stress that in the present instance, the accused's wanton act of stealing whilst in uniform and armed with a weapon, was not only an offence that broadly implicated public institutions by tarnishing the credibility of law enforcement agencies, it was also a crime that would have offended the sensibilities of the general public.

33 A decision to serve in an enforcement or security agency is a multi-faceted commitment: it does not constitute solely of a decision to be gainfully employed, but must also necessarily encompass an attendant willingness to make sacrifices in a bid to maintain law and order. In acknowledgement of the fact that police officers and other security personnel often place themselves in extremely vulnerable positions when they discharge their daily duties, the courts take the uncompromising view that offences committed against such personnel protecting the public and/or business, especially when committed in their line of duty, should be deemed to be aggravated. The underlying reasoning for this is well-encapsulated in the comments made in *Ng Cheng Heng v PP* (Magistrate's Appeal No 32/93/01) (as cited in *Sentencing Practice in the Subordinate Courts* (Lexis Nexis, 2nd Ed, 2003) at p 611):

> Law enforcement agencies like the police have to take on the unpleasant but important task of enforcing the laws of the land in order to maintain social harmony, peace and justice. In the process, they often have to come into contact with offenders … Police and other law enforcement agencies therefore must be protected and any act of violence should not be tolerated or condoned.

34 Such special protection, however, comes with what may be broadly described as a corresponding cost. As *quid pro quo* for being accorded such protection, what the public expects, and indeed, should be entitled to expect, on the part of such security personnel is the strict unstinting adherence to exemplary standards of conduct. Serious transgressions cannot be countenanced and have to be dealt with severely given the far-reaching and detrimental consequences it could have in corroding the trust and rapport that have been tirelessly built over time between the public and such agencies. Needless to say, this will have to be carefully assessed in the context of the offence and the office an offender holds at the material time.

35 For that reason, the courts have continually stressed that a lenient attitude must not be adopted in relation to such transgressions on the part of law enforcement officials. As Yong Pung How CJ authoritatively noted in *PP v Gurmit Singh* [1999] 3 SLR 215 ("*Gurmit Singh*"), at 217, [11]:

> [A] deterrent sentence was warranted as the respondent had been a police officer who had committed these offences in the commission of his duty. The public is entitled to expect the highest standards from the police force.

36 An important qualification to this approach is, however, necessary: not *every* transgression committed by an enforcement or security officer must necessarily be visited by a harsh penalty because of the consideration of general deterrence. In that respect, Yong CJ's comments in *Annis bin Abdullah v PP* [2004] 2 SLR 93 ("*Annis*") are instructive. In that case, the accused was a police sergeant attached to the Police Coast Guard who had been convicted of having carnal intercourse against the order of nature under s 377 of the Penal Code. Though there was no suggestion whatsoever that the accused had acted in such a way as to impinge directly upon the trust reposed in police officers, the District Court had sentenced the accused to two years' imprisonment, the severity of the sentence meted out partly because of the district judge's view that the appellant's status as a police officer constituted an aggravating factor. In allowing the accused's appeal and reducing his sentence by half, Yong CJ remarked, at [82], as follows:

> [I]n this case, the mere fact that the appellant had been a police officer should not have been regarded as an aggravating factor. While the courts will not hesitate to punish police officers who abuse their powers to commit offences, a deterrent sentence may not be warranted in cases *where a police officer offends outside the scope of his official duties and does not abuse his position to commit criminal mischief*. [emphasis added]

37 The distinction drawn by Yong CJ is, in my view, eminently reasonable. Where the offence committed appears to be wholly extrinsic and irrelevant to the office that is held by an accused, as was the case in *Annis* ([36] *supra*), there would appear to be no basis, without more, to unduly punish a police officer merely by reason of the nature of his employment as a police officer. I should stress in no uncertain terms, however, that it would *not* be the corollary of such a principle that an accused's status as a police officer must, as a matter of principle, *only* be relevant in instances where the offences were, *strictly speaking*, committed in the commission or discharge of his duties. To appreciate why this is so, it is necessary to closely scrutinise, and to distil, the precise rationale underlying the principle that the status as a law enforcement or security officer could count as an aggravating factor. To that end, it warrants reminder that the rationale underlying the imposition of a deterrent sentence where an accused party is a police officer or an auxiliary police officer is the need to reflect the damage that may be inflicted on the institutional credibility of security agencies, damage to the standing of their officers and the Court's concern about the abuse of the trust and responsibility that has been reposed in a police officer. Needless to say, such a sentence also serves as a salutary reminder to other serving officers, that transgressions by them will not be condoned.

38 I note that the district judge clarified that the accused had not acted *under the colour of office* to gain access into Sheng Siong's premises on any of the three instances of theft. In this connection, it appeared that he was also persuaded by the fact that while the accused was armed, he did not reach for his weapon or threaten to use it and that the accused person had also not directly threatened the staff arresting him.

39 Surprisingly, apart from citing the above passage from *Gurmit Singh* ([35] *supra*), the learned district judge failed to clarify why these considerations had neutralised the position. However, from his observations at [16] of the *GD* that the accused had not been at "his place of duty in the course of performing his assigned responsibilities" at the time, it appears that the district judge was of the view that a distinction existed between offences committed by police officers *in the course of their duties* and offences committed by police officers *outside the scope of their duties*. It would similarly appear that, in the district judge's view, it must follow that in the latter situation, less (or even no) consideration need be given to the fact that the accused was uniformed at the material time in determining the appropriate sentence to be passed.

40 With respect, I disagree. As earlier explained, the distinction between offences committed

within the scope of a uniformed officer's official duties and those extrinsic to such duties is not founded upon a mechanical assessment *vis-à-vis* the officer's scope of duties. The *real* distinction, as alluded to earlier, is whether there has been an abuse of the trust and reliance placed on the officer concerned in the commission of the crime in question. Just as it could not be said that every offence committed during the course of duty would invariably be an abuse of the trust and authority that is reposed in such officers, the converse, namely that any offence that is *not* committed during the course of duty would *not* involve an abuse of the trust and authority reposed in these officers, is plainly not correct.

41 As such, while the learned district judge was clearly right in saying that the accused had not acted under the colour of office to *gain access* into Yuan Ching Road Supermarket's premises, this fact alone did not warrant the conclusion that he arrived at, namely that in the circumstances, the accused's status as a CISCO officer should be discounted in sentencing. Instead, he should have proceeded to query as to whether there had been an abuse of the trust placed in him *qua* CISCO officer. Applying these considerations to the factual matrix, there was little doubt that *vis-à-vis* the offence committed on 14 November 2006, the accused had committed the offence under the *colour of his office* by reason of having worn the CISCO gear and being armed with a weapon. Indeed, as is plainly evident from his brazen declaration that he was a "police officer" (see [11] above) when he was apprehended *vis-à-vis* the third offence, it was not open for the accused to suggest that he was not aware of the impact the uniform would have on a layman and the trust being reposed in him (by the public in general) as a CISCO officer. In asserting that he was a "police officer" the accused's desperate intention must surely have been to suggest that it would be unthinkable for a police officer to have committed, and hence be queried on, the theft.

42 The situation was further exacerbated by the fact that the accused in this instance had been armed. The district judge appeared to have placed insignificant, if any, weight on this. The reason for this lack of reliance was that the accused's behaviour did not amount to a "veiled threat" to use the revolver. While I accept that there was no evidence that the accused had intended to discharge the revolver, I am inclined to conclude, unlike the district judge, that the accused's words, "be careful", were indeed intended to convey menace. In my view, it is unrealistic not to acknowledge that the accused must have been acutely conscious of the fact that he was armed and, accordingly, that the effect of the repeated warning to the employees of Sheng Siong to "be careful" had been intended to convey a veiled threat of potential harm. In any event, the mere possession of the weapon in the commission of the crime in the given scenario exhibited a patent disregard for public safety and the trust reposed in his office. It is behaviour that cannot be condoned. There is no telling what might have happened if the accused had lost control of himself after he was apprehended.

43 Accordingly, in the present context, there is considerable public interest in the imposition of a severe sentence. Public confidence in the enforcement agencies can be corroded by the irresponsible criminal acts of avaricious, reckless and foolish like offenders. The abuse of the trust and confidence placed in CISCO and/or police officers, if left unchecked, could result in enforcement agencies, in general, having diminished legitimacy and public acceptance.

44 In light of the possible misperception that the conclusions arrived at *apropos specific* deterrence and *general* deterrence are diametrically opposing, in relation to the point of the accused being in uniform and suitably armed, I should stress that the *apparently* different conclusions arrived at above do not evidence irreconcilable jurisprudential approaches, but rather the considerably different underlying rationale that underpin each particular limb of the deterrence principle. When assessing the efficacy of *specific* deterrence as a sentencing consideration, the emphasis is, as already discussed earlier, person specific, in so far as the focus is on whether enhanced punishment would assist in ensuring that the accused does not reoffend. In contrast, when considering the

efficacy of *general* deterrence, the focus is on whether a severe sentence would serve to warn others against committing similar offences. Viewed in this light, it is clear that notwithstanding the *superficial* inconsistency, the two concepts and how they apply here are in conceptual symmetry and harmony.

45 Drawing together the various threads of analyses thus far, it was plain to me that the learned district judge erred in both his reasoning that specific deterrence was not pertinent and his assessment that general deterrence was only of moderate relevance. It would be germane at this juncture to proceed to consider the principle of retribution.

Retribution and proportionality

46 The concept of retribution operates on the commonsensical notion that the punishment meted out to an offender should reflect the degree of harm and culpability that has been occasioned by such conduct. This is premised on the belief that "the societal interest is expressed in the recognition that typical crimes are wrongs, for which public censure through criminal sanction is due": see Andrew Von Hirsch *et al*, *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005) at p 4. In this regard, it would be useful to aver to Lawton LJ's famous judicial dictum in *Davies* (1978) 67 Cr App R 207, where he observed at 210:

> At one time it was fashionable to suggest that retribution ought not to enter into sentencing policy. That opinion, I think, is not held as strongly now as it was a few years ago. The reason is manifest: the *courts have to make it clear that crime does not pay and the only way they can do so is by the length of sentences*. Sentences show the court's disapproval, on behalf of the community, of particular types of conduct. [emphasis added]

47 Given the inextricable relationship that exists between the nature of a particular offence and the attendant sanction to be imposed, it also follows that the inevitable corollary of the retribution principle is the proportionality principle. The sentencing court, after all, "cannot lose sight of the proportion which must be maintained between the offence and the penalty and the extenuating circumstances which might exist in the case": see *Liow Siow Long v PP* [1970] 1 MLJ 40 at 42. Put another way, the concept of proportionality demands that offenders who commit more serious offences be punished more severely than those less so.

48 This *per se*, of course, does little to resolve the question that invariably arises: how do we measure the seriousness of any offence? As I pointed out in *Law Aik Meng* ([24] *supra*) at [33], one can adopt a two-pronged approach in the consideration of the severity of the crime:

> According to Professor Andrew von Hirsh in his article "*Deservedness and Dangerousness in Sentencing Policy*" (1986) Crim L R 79-91 at 85, the seriousness of crime is a double-pronged fork: the first prong relates to the degree of harmfulness of the conduct, while the second focuses on the extent of the actor's culpability when committing the conduct. …

49 Applying the first prong of such a test, it should be readily apparent that the degree of harm that was occasioned by the third instance of shoplifting on the part of the accused was significantly more disturbing than that posed by the typical shoplifting offence. The harm caused by the accused was not merely economic in nature; instead by being brazen enough to commit the offence whilst under the colour of his office, and armed while doing so, the accused had also tarnished the hard-earned reputation for trust and responsibility that law enforcement agencies have earned.

50 Moving on to the second prong of the test, it is painfully evident that the accused's

culpability was, for all intents and purposes, substantial. Indeed, on at least two of the three instances of theft, the accused acted alone. On the other occasion where he was not alone in the commission of an offence (*ie*, the second charge), his involvement was significant. In the premises, while the execution and planning of the thefts were inept, this cannot mask the fact that the accused was alarmingly brazen in the manner in which he repeatedly committed similar offences in a relatively short period of time.

The commission of offences whilst the accused is on bail

51 Before proceeding to consider the appropriate sentence to be imposed in the circumstances, one further matter of significance warrants careful examination. It may be recalled that the accused had audaciously committed the offence that formed the subject matter of the first charge whilst he was on police bail (see [8] above) for the offences that formed the subject matter of the second and third charges. The conspicuous absence of judicial comment so far on the weight that should be placed on such a factor is a little surprising. The lower courts have appeared to accept, without more, the principle that an offence which is committed by an offender whilst on bail is an aggravating consideration that warrants the imposition of a more severe sentence: see, for example, *Adrian Tan Chun v PP* [2001] SGMC 12 at [23]–[24] and *Tay Poh Lim v PP* [2001] SGDC 13 at [16].

52 However, the *rationale* underlying this approach does not appear to have been clarified todate in local cases. The facts before me succinctly exemplifies the point – the district judge had noted that such a factual matrix constituted an aggravating factor, without attempting to further elaborate as to why this was so. The omission of such explanation is, in my view, rather unfortunate, as the sentencing significance of an aggravating factor can only be appreciated if it is clearly understood why it is so. To quote but one example, where a purported aggravating factor engages considerations of deterrence, it would be of little weight if the factual matrix before the judge is such that rehabilitation should be the primary sentencing consideration and *vice versa*: see, in this regard, *Ashworth*, 2005 ([22] *supra*) at p 180. Put quite simply, unless the *rationale* behind a sentencing consideration is understood, its effect on the appropriate sentence to be meted out can never be fully appreciated and appropriately applied. It is for this reason that I did not deal with the issue earlier under the more generic hearing of deterrence.

53 It has often been suggested that the objective underlying the bail mechanism is the need to secure the attendance of the prisoner at the trial: see, for example, *PP v Mahadi bin Mohamed Daud* [2000] 1 SLR 30 at [10]. Such a proposition, however, only articulates and spells out part of the reason: if the sole objective of bail is to secure the accused's attendance thereafter, then the very rationale of bail is questionable, for it must surely follow that continued incarceration until trial would suffice to serve to discharge this objective more effectively. Instead, the primary rationale for bail must surely be rooted on the premise that a party should not be deprived of his personal liberty until he has been convicted and sentenced (see, in this regard, *Abul Khabir Uddin Tohron Nisa v PP* [2006] SGHC 57 at [5]). Put another way, the bail mechanism represents the best compromise between two apparently irreconcilable goals: the right to liberty prior to conviction and that of the securing of the accused's attendance at trial: see S Chandra Mohan, *Bail in Singapore* (Malayan Law Journal (Pte) Ltd, 1977) at p 14.

54 As in all balancing exercises, in this case, between public interest and individual liberty, there are instances in which bail should not be granted. To give but two pertinent examples: where it is likely that the accused (a) would seek to use his liberty to intimidate witnesses or tamper with evidence; (b) abscond, or abuse his freedom to pose further harm to society *via* the commission of further offences whilst on bail. The courts would be remiss in discharging their functions if they mechanically grant or refuse bail. Seen from this perspective, the granting of bail in every case

involves a calculated assessment on the part of the courts (or the police, in the case of police bail), incorporating both a belief and trust that the alleged offender would not abuse his liberty to reoffend against society and/or disrupt the administration of justice. It appears to be now quite widely accepted that it is the blatant abuse of such a position of trust that constitutes the aggravating factor when a party commits an offence whilst on bail. Put another way, the accused's culpability for the offence is enhanced because he had exploited the trust that has been reposed in him by the State. I should also point out that in England, by virtue of s 29 of the Criminal Justice Act 1991, "the court *shall treat* the fact [*ie*, offending on bail] as an aggravating factor" [emphasis in original]: see *Padfield & Walker*, 1996 ([25] *supra*) at p 43–44. There was, however, no articulation of the rationale of this principle by the English Parliament; see Christopher Harding and Laurence Koffman, *Sentencing and the Penal System: Text and Materials* (Sweet & Maxwell, 2nd Ed, 1995) ("*Harding & Koffman*") at p 156.

55 I should highlight, at this juncture, that the theory that such an act constitutes an "abuse of trust" that exacerbates the accused's culpability is not one that has gained full currency or acceptance in academic circles. One commentator, for example, suggests that such a retributive justification is "too artificial" (see Nigel Walker, *Aggravation, Mitigation and Mercy in English Criminal Justice* (Blackstone Press Limited, 1999) at p 49) whilst another impliedly suggests that it should not be accorded considerable weight in sentencing, since "on desert principles, the predominant consideration should be the degree of harmfulness and culpability of actual criminal conduct": see, in this regard, *Harding & Koffman* ([54] *supra*) at p 156.

56 There is merit in the views of these commentators in that there is some artificiality about the retributive justification as being the *primary* justification: the very reason for conventional "abuse of trust" situations to be aggravating in nature is because such "positions of trust are not normally given to individuals unless they have unblemished references [and because] [t]he individual … puts himself forward as trustworthy": see Andrew Ashworth, *Sentencing and Penal Policy* (Weidenfeld and Nicolson, 1983) at p 194. In my view, the same cannot be said about the bail scheme, for not only is the basic premise about the existence of a trustworthy individual missing, but just as importantly, this fails to adequately explain why persons who commit offences while on bail should be punished further if the initial offence was one for which bail is *as of right*. For that reason, though there must surely be *some element* of retributive justice that underpins the status of the commission of an offence on bail that renders it aggravating, it surely cannot constitute the sole justification for such a state of affairs.

57 Instead, in my view, the issue of the reason why the commission of an offence, whilst on bail for another, is itself an aggravating factor can be seen from another, and indeed, more fundamental perspective – namely that it squarely and directly engages the two facets of *deterrence*.

58 Turning first to the applicability of *specific* deterrence as a sentencing consideration, it would be recalled that the very premise of such a sentencing consideration is that an appropriate sentence would be required to be fashioned to persuade the accused to refrain from future unlawful conduct. In this context, I find the incisive comments of the Hong Kong Court of Appeal in *Attorney General v Law Ying Cheung* [1981] 1 HKC 161 (at 163), particularly apposite:

> We accept that where a person for the first time commits an offence and, finding that he gets away with it, is tempted to commit another, and then finding that he gets away with that other, commits yet a further offence and so on again and again until he is finally caught, it may in the first instance be proper to treat him as a first offender. *The position is vastly different where a person is caught at his first attempt but while on bail awaiting trial and sentence deliberately goes out to commit a more serious offence. That does not indicate a sudden fall to temptation.*

That indicates a heart which is already hardened … [emphasis added]

59 Needless to say, given that the appropriate sentence must encompass the consideration of the peculiar disposition of the accused (see [25] above), all other things being equal, an accused who manifests a lack of any desire to cease unlawful activity even after being caught and set on bail would, in all probability, only be persuaded of the demerits of his unlawful conduct and suppress his proclivity for committing criminal acts *via* the imposition of a more severe sentence than would otherwise have been imposed. Put another way, offenders who are not able to accept or reflect upon the wrongful nature of their conduct when an opportunity to show contrition is given, need stronger sanctions to precipitate introspection and self-examination of their conduct.

60 The concept of *general* deterrence is also relevant in this context. There is considerable force in the argument that a severe sanction would send out an important signal and deter similarly minded individuals from abusing the conditional liberty that had been accorded to them. In this regard, it has been astutely noted by Street CJ in *R v Richards* [1981] 2 NSWLR 464 at 465:

> The community must be protected as far as possible from further criminal activities by persons who take advantage of their liberty on bail to commit further crimes. *The only means open to the criminal courts to seek to provide this protection is to pass severely deterrent sentences upon those who thus abuse their freedom on bail.* This will ordinarily involve a significant accumulation of the sentence for any subsequent offences on top of the sentence proper to be passed for the original offence. *It must be made abundantly plain that persons at large on bail cannot expect to commit further crimes "for free". On the contrary, they will receive salutory penalties for the very reason that they have abused their freedom on bail by taking the opportunity to commit further crimes.* [emphasis added]

61 To recapitulate, the commission of an offence whilst on bail is *aggravating* in nature because it is consistent with two of the key sentencing considerations, namely *retribution* and *deterrence*, though more so the latter than the former. Accordingly, where the primary sentencing consideration that is engaged represents one of these considerations, or both, the fact that the offence had been committed on bail assumes further significance meriting enhanced sanctions to reflect the abuse of trust and the manifested proclivity for offending behaviour.

62 On the facts of the case before me, while the district judge explicitly highlighted that he took the fact that it was an aggravating factor into account, he unfortunately failed to elaborate as to how this impacted his final sentence. From the relatively mild sentence passed by him, it was plainly apparent to me that the district judge erred in failing to appreciate the considerable gravity that should be accorded to the fact that the offence was committed whilst the accused was on bail, and the relevancy and importance of such an aggravating factor to the sentencing considerations of *deterrence* and *retribution*.

Section 380 of the Penal Code

63 Nonetheless, it is also important to view the extent of the harm occasioned by the accused's conduct in its proper criminal setting. Section 380 of the Penal Code prescribes a maximum sentence of seven years' imprisonment and a fine. While the offence committed by the accused was serious and therefore warranted a substantial period of incarceration, it did not follow that the sentence could or should be calibrated against the upper end of the spectrum. As highlighted in *Sim Gek Yong v PP* [1995] 1 SLR 537 at [13] and *Angliss* ([22] *supra*) at [84], maximum sentences and those that are close to the maximum should be meted out only to the worst cases that come before the Court.

64 As much as the accused's conduct had deeply offended the sensibilities of the general public and had to be visited with a severe term of incarceration, I should stress that this is by no means the sort of case that was intended to attract the maximum penalty devised by Parliament. In my view, the absence of *real* premeditation, the relatively minor value of the goods, the absence of vulnerable victims, the absence of similar antecedents (though it warrants reiteration that the accused had been on bail for one of the offences) and the absence of violence, while clearly *not* mitigating factors in their own right, pointed towards the need for some degree of moderation in the sentence that is meted out.

The appropriate sentence

65 I now turn to the appropriate sentence. It is pertinent to note that the thrust of the Prosecution's submissions were directed at the sentence given on first charge. For that reason as well, I saw no reason to disturb the sentences meted out by the trial judge in relation to the second and third charges.

66 The district judge himself diffidently acknowledged in relation to the first charge that "the sentence would have to depart from the prevailing norm" (see *GD* at [15]), and after taking into account the fact that the higher end of the norm for petty theft is in the region of two weeks, he appeared to be of the view that a ten-week imprisonment term *vis-à-vis* the first charge would be appropriate. He premised this on the following grounds: first, that on a global basis, the sentence imposed was at least quadruple the sentence that would have otherwise be imposed in similar circumstances and second, that the global quantum of 14 weeks' imprisonment would not be "out of place" when contrasted with the sentence in *Fackir* ([13] *supra*). In my view, the district judge erred on both fronts.

67 First, the mere fact that a sentence would be at least *quadruple* of the sentence that would otherwise be imposed in plainly *dissimilar* circumstances is, quite obviously, neither here nor there. In the absence of any clear guidance from relevant precedents, a court should not attempt to vaguely peg its sentencing discretion onto the coat tails of dissimilar precedents that do not take into account the immediately applicable sentencing considerations, *ie*, in this case deterrence and retribution. Quadrupling the sentence from those dissimilar convictions did not absolve the district judge from his obligation to pay heed to these considerations. Given that consistency *per se* cannot be an overriding sentencing consideration (see *Tan Kay Beng* ([21] *supra*) at [45]), there is much force in Prof Tan Yock Lin's cogent reasoning in his treatise (see Tan Yock Lin, *Criminal Procedure vol 2* (LexisNexis, 2007), at [1555]–[1600]) that:

> [s]entencing … cannot be reduced through a comparison of precedents to a mathematical formula. Such formula would often be spurious and deceptive in its appearance of certainty and predictability.

68 Second, the circumstances in *Fackir* ([13] *supra*) were markedly different from those existing in the present matter. In that case, the accused had been an auxiliary police officer who was attached to the Singapore Airport Terminal Services ("SATS") and had, whilst undertaking foot patrol duties, stolen personal belongings that amounted to some $25. Another charge, involving the fraudulent possession of a calendar and two notebooks, was taken into consideration in sentencing. The accused was sentenced by the District Court to three months' imprisonment. The length of the sentence appeared to have been primarily premised on the view that the offender in question had committed the offence in the course of his duty, breaching "the very security of the building he was supposed to safeguard" (at [12]).

69 In my view, even on a cursory appraisal, it was immediately apparent that the factual matrix here was quite different from that in *Fackir* ([13] *supra*) in several material respects. For one, whilst the accused in that instance was quite rightly given a deterrent sentence for committing such an offence in the course of his police duties, the primary consideration there was the accused's blatant opportunism in stealing items from the desk of staff in premises that he had been assigned to protect. Furthermore, it should not be overlooked that in that case, the value of the property stolen, as mentioned earlier, was extremely small. It is also pertinent to note that the accused in that instance was not on bail at the time of the commission of the offence.

70 I might also add that it appears the judge in *Fackir* ([13] *supra*) had, in sentencing the accused to only three months' imprisonment, had himself acknowledged that he had been somewhat charitable to that accused. This is made evident by the court's clear expression of surprise at the conclusion of the grounds of decision at the accused's appeal in the light of the relatively light sanction imposed when viewed against the backdrop of the statutory maximum and other decided cases. It is therefore of no surprise that the appeal to this Court in that instance failed.

Mitigating factors

71 As I mentioned earlier, the accused attempted to highlight mitigating factors to temper the sentences. It appeared to me that the accused's mitigation plea encompassed two discrete considerations: first, that he had committed the thefts so as to return a debt to a friend of about $300 and second, that further incarceration would result in financial and emotional hardship for the family. Neither consideration, in my view, were applicable on the facts of this case.

72 I first address the plea that the goods had been stolen to facilitate the repayment of a debt of about $300. This is a hardly credible assertion. The stolen DVD players from the first theft had a total market value of some $498 – in that context, if the sole motivation behind the thefts is the need to repay the debt, it is difficult to see why it would not be possible to do so with the ill-gotten gains that were received from the first theft. In any event, even assuming *arguendo* we accept, without question, his purported motivation for the theft, such an argument in mitigation is clearly a non-starter for it is trite law that financial difficulties would, in the absence of exceptional or extreme circumstances, not constitute a valid mitigating factor: see *PP v Ong Ker Seng* [2001] SGHC 266 at [30].

73 In a similar vein, while one might sympathise with the accused about his father's health and the financial constraints that his family face as a result of his inability to contribute, it is a settled law that no weight should be given to fortuitous considerations such as hardship caused to the family, except in the most exceptional of cases: see, *inter alia*, *Lim Choon Kang v PP* [1993] 3 SLR 927 at [5] and *Leaw Siat Chong v PP* [2002] 1 SLR 63 at [12]. As emphasised in *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305, such hardship to the family would be the inevitable price that must be paid for the moment of folly and cannot affect what would otherwise be an appropriate sentence. There was nothing on the record that persuaded me that this was an exceptional case which merited the exercise of such discretion.

74 What then would be an appropriate sentence *vis-à-vis* the first charge? There are no directly relevant sentencing precedents. In the light of the fact that he was on bail at the material time, I was satisfied that the accused's actions in relation to the first charge attested to his recalcitrant attitude and his lack of remorse and contrition *apropos* the second and third charges – indeed, his behaviour showed a worrying and distinct lack of appreciation apropos the gravity and seriousness of his conduct. Taking into account all of the above considerations, I was of the view that an appropriate sentence in the circumstances in relation to the first charge would be a sentence of

18 months' imprisonment. Such a sentence would more accurately take into account the various sentencing considerations I had adverted to.

Conclusion

75 In my view, although the accused did not use the "colour of his office" to *gain access* to the premises, it is evident that the district judge failed to appreciate the gravity of the fact that the accused had abused the trust and confidence that had been reposed in him in his capacity as an auxiliary police officer. Accordingly, I am of the opinion that the sentence that had been arrived at by the learned district judge in respect of the first charge was manifestly inadequate.

76 As the guardians and enforcers of the law, law enforcement and/or security officers are not only expected to enforce and maintain the law *vis-à-vis* others, but are expected to conduct themselves in a befitting manner that would uphold their legitimacy to enforce such laws. It should be intuitively commonsensical that the members of the police force and auxiliary police force must be seen to *obey* the law themselves if they are to possess any legitimacy in *upholding* it.

77 In the circumstances, not only was a custodial sentence undeniably warranted, such sentence had to serve a deterrent purpose. I observed in *Tan Kay Beng* ([21] *supra*) at [53], "a significant number of offenders can be as justly and effectively dealt with by a shorter custodial sentence rather than a longer one". In many, if not most, circumstances, that observation would squarely apply. It should be stressed that the situation here, however, is quite different. At the risk of repetition, it was clear beyond peradventure that the practical effect of condoning such conduct *via* the failure to ensure the imposition of a severe sentence would be tantamount to a sign that the courts are prepared to compromise the sacred trust that has been built up by the enforcement agencies over decades.

78 In the result, I ordered that the sentence of ten weeks' imprisonment on the first charge be enhanced to eighteen months. As there was clearly an insufficient basis for disturbing the quantum of the sentences meted out by the learned trial judge *apropos* the second and third charges in light of the absence of any particularly distressing features, I did not disturb these sentences. However, I further directed that the sentence imposed *vis-à-vis* the first charge was to run consecutively to the sentence passed in relation to the third charge. The accused would therefore have to serve a total term of imprisonment of 18 months and two weeks.

Coda

79 Two other brief observations are in order. First, there would be no cogent reason as to why the approach adopted earlier (see [24] to [44] above) of placing primacy on the value of deterrence as a sentencing consideration should not equally apply to a civil defence officer who steals from a vulnerable victim in an ambulance or to a soldier who uses his position of authority and trust to commit theft within his army camp. In both instances, the persons in question would have committed a criminal act that would corrode the trust and confidence that has been reposed in them and the institution. In the premises, as Yong CJ astutely observed in *S Balakrishnan v PP* [2005] 4 SLR 249 at [143], where public personnel are willing to commit a "complete betrayal of their offices" in falling below the level of conduct that should be expected of them, this Court should not hesitate to show its disapproval and aversion for such egregious conduct by passing a sufficiently significant term of imprisonment.

80 As an aside, I should also place on record my concern about the lack of safeguards that were then in place at CISCO. This allowed the accused to draw out a weapon while on police bail. If

anything positive has come out of this most unfortunate episode, it is that I have been informed, during the course of the proceedings, that CISCO has now put in place adequate safeguards and have opened a line of communication with the Police that would prevent similar offences from recurring when its officers are placed on police bail.