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Case Note

THE DOCTRINE OF WILFUL BLINDNESS IN DRUG OFFENCES

Adili Chibuike Ejike v Public Prosecutor [2019] 2 SLR 254

In *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254, the Court of Appeal clarified the operation of the wilful blindness doctrine in the context of knowing possession for drug offences. In particular, it affirmed wilful blindness as a doctrine of substantive rather than evidential law, which applies as a limited extension to the legal requirement of actual knowledge. The court then articulated a three-part test for the finding of wilful blindness in relation to knowledge as an ingredient of possession. However, it left open the content of the doctrine as applied to the element of knowledge in drug offences. This note agrees with the characterisation of the doctrine, proposes a reformulation of the three-part test, and analyses the operation of the doctrine in rebutting the presumption of knowledge under s 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).

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I. Introduction

1 The doctrine of wilful blindness has been most frequently employed here in the context of offences relating to controlled drugs under the Misuse of Drugs Act[2] ("MDA"). According to the doctrine, an accused person who "[shuts] his eyes to an obvious means of knowledge" or "deliberately [refrains] from making inquiries, the results of which he

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2 Cap 185, 2008 Rev Ed. See Chan Wing Cheong, "Culpability in the Misuse of Drugs Act: Wilful Blindness, the Reasonable Person and a Duty to Check" (2013) 25 SAcLJ 110 at 111, para 4.

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might not care to have" is deemed to have actual knowledge.[3] In cases of drug offences, a clear admission, or proof of an actual situation of actual knowledge is rarely forthcoming.[4] Thus, an accused person who, in circumstances of suspicion "firmly grounded and targeted on specific facts", deliberately decides not to make further inquiries in order to avoid the truth he does not wish to know, is regarded in law as having been wilfully blind, which is the equivalent of having actual knowledge.[5]

2 These twin requirements of a threshold level of suspicion and a deliberate refusal to make inquiries ("two-part test") have been variously applied in the contexts of whether an accused knew of the presence[6] or quantity[7] of drugs he was carrying, and whether he knew of the nature of the seized drugs.[8] At the same time, the doctrine has been invoked in analysing whether an accused person has been able to rebut the presumption of knowledge of the nature of the controlled drug under s 18(2) of the MDA ("the s 18(2) presumption"). This is in two ways: first, it has been held that an accused person who was established to be wilfully blind would not be able to rebut the s 18(2) presumption.[9] Second, where an accused "should have been reasonably suspicious" as to what was handed to him but did not "take the reasonable step of enquiring", his conduct could amount to "wilful blindness" in a looser sense, with the result that the s 18(2) presumption cannot be rebutted.[10]

3 In *Adili Chibuike Ejike v Public Prosecutor*[11] ("*Adili Chibuike*"), the Court of Appeal considered the question of an accused person's knowledge of the drugs found in his possession, which in turn rested on the "meaning and operation of … wilful blindness".[12] First, it held that the term should be properly used in the "extended sense" to describe a mental state which falls short of actual knowledge, but still satisfies the requirement of knowledge as it is the legal equivalent of actual

3 *Roper v Taylor's Central Garages (Exeter), Ltd* [1951] 2 TLR 284 at 288–289.
4 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [104].
5 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [125] and [127]; *Public Prosecutor v Shah Putra bin Samsuddin* [2018] SGHC 266 at [25].
6 *Public Prosecutor v Devendran A/L Supramaniam* [2014] SGHC 140 at [51], affirmed on appeal in *Devendran a/l Supramaniam v Public Prosecutor* [2015] 3 SLR 1252.
7 *Public Prosecutor v Muhammad Farip bin Mohd Yusop* [2014] SGHC 125 at [36]; *Public Prosecutor v Khor Chong Seng* [2018] SGHC 219 at [62]–[63].
8 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [156]–[158].
9 *Masoud Rahimi bin Mehrzad v Public Prosecutor* [2017] 1 SLR 257 at [55].
10 *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [21]–[22]; *Muhammad Ridzuan bin Md Ali v Public Prosecutor* [2014] 3 SLR 721 at [76] and [81]–[83].
11 [2019] 2 SLR 254.
12 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [4].

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knowledge.[13] Second, building on the above-mentioned two-part test,[14] it held that in order to establish wilful blindness for knowing possession, there must additionally have been "reasonable means of inquiry available to the accused person, which, if taken, would have led him to discovery of the truth".[15] Third, it held that the presumption under s 18(1) of the MDA may not be used to establish wilful blindness.[16] However, the Court of Appeal confined its holdings on the doctrine and its interaction with the statutory presumptions to the element of knowing possession, leaving the question of the operation of the doctrine with regard to the element of knowledge and the s 18(2) presumption to be considered in an appropriate case in the future.[17]

4 This article agrees that the characterisation of the doctrine as substantive rather than evidential law is a principled one, and will ensure greater consistency in its application going forward. However, it is submitted that the availability of a reasonable means of inquiry should not be a requirement in determining wilful blindness, for which reason this distinction has not been made in the reported cases previously. It is therefore argued that the test for wilful blindness in knowing possession should be the same two-part test as applied to the knowledge element, or alternatively reformulated to emphasise the subjective nature of *mens rea*. The reasonable availability of means to discover or confirm facts in question may instead be considered in analysing whether an accused had deliberately refused to make further inquiries, or if he had sufficiently inquired. It is argued that such an approach will be consistent with the supportive, or evidentiary role of objective facts in the court's assessment of the true subjective state of knowledge of the accused. Finally, the provisional views of the Court of Appeal on the operation of wilful blindness with respect to the knowledge element will be analysed.

II. Facts and background

5 In *Adili Chibuike*, the appellant, Adili Chibuike Ejike ("Adili") had travelled from Singapore to Nigeria and two packets containing drugs were found in the inner lining of his luggage, a small suitcase.[18] He was subsequently charged with importing two packets containing not less than 1,961g of methamphetamine.[19] Adili, a Nigerian citizen, had

13 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [47]–[50].
14 See para 2 above.
15 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [51].
16 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [66]–[67].
17 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [42].
18 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [2].
19 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [1].

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previously contacted an acquaintance for financial assistance in August 2011.[20] The acquaintance had agreed to give Adili a sum of 200,000 to 300,000 naira (approximately US$1,324 to US$1,986) and later requested Adili's passport "to do something with", but did not tell him what that was.[21] Subsequently, Adili was instructed by another acquaintance to travel to Singapore with a piece of luggage, which he was to hand over to a contact in Singapore.[22] He was then given the suitcase, his passport, a set of travel and other documents, and US$4,900 in cash.[23]

6 At trial, it was not disputed that Adili was in physical possession of the luggage bag containing the methamphetamine, and he was therefore presumed to be in possession of the methamphetamine pursuant to s 18(1) of the MDA.[24] The Defence did not seek to challenge or rebut the presumption.[25] The trial thus proceeded on the basis that the appellant was in possession of the methamphetamine.[26] At the same time, it appeared to be common ground that the appellant did not in fact know that the case contained the two bundles of methamphetamine hidden within its inner lining, although the parties did not appear to have considered the legal significance of this fact.[27] The trial thus focused on whether Adili had been able to rebut the presumption of knowledge under s 18(2) of the MDA.[28] In this regard, Adili's evidence was that he was delivering the luggage bag for his friend and did not know of the drugs hidden in the bag.[29] In response, the Prosecution sought to rely on the wilful blindness doctrine to counter Adili's effort to rebut the presumption.[30]

7 The trial judge disagreed with the Prosecution's use of the wilful blindness doctrine.[31] He differentiated between two forms of knowledge, namely, actual knowledge and presumed knowledge.[32] Furthermore, he stated that the doctrine applies to infer actual knowledge, whereas presumed knowledge is established when the conditions of s 18 of the MDA are satisfied.[33] Thus, he observed that "where the Prosecution's case

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20 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [6].
21 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [6].
22 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [7].
23 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [7].
24 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [22].
25 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [22].
26 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [22].
27 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [22].
28 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [22].
29 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [15].
30 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [23].
31 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [26].
32 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [27].
33 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [27].

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is founded on presumed knowledge, it should not seek the assistance of wilful blindness".[34]

8 Nevertheless, the trial judge held that the s 18(2) presumption was unrebutted. He found Adili an unreliable witness due to inconsistencies between his oral testimony and his investigation statements.[35] The judge also rejected Adili's evidence that he believed the case contained only clothes and shoes.[36] This was as, *inter alia*, he found that Adili did not in fact trust the two acquaintances, and knew that they had supplied him with false calling cards and a false vaccination certificate to enable him to make the delivery.[37] Furthermore, Adili had been promised a substantial reward for delivering the case to an unknown person in Singapore.[38]

9 On Adili's appeal against his conviction and sentence, the Court of Appeal noted that while the Prosecution had relied on the statutory presumptions in ss 18(1) and 18(2) of the MDA, "some difficult questions" had arisen as to whether there are circumstances in which the presumptions may not be invoked, and the meaning and operation of "wilful blindness".[39] The Court of Appeal further established that the following elements must be proved by the Prosecution to make out the offence of importation under s 7 of the MDA: (a) the accused person was in possession of the drugs; (b) the accused person had knowledge of the nature of the drugs; and (c) the drugs were intentionally brought into

34 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [28].

35 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 ("*Adili Chibuike (HC)*") at [19]–[22]; *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili Chibuike (CA)*") at [23]. For example, on whether he trusted the two acquaintances, his oral testimony was that he trusted them and it did not occur to him that the trip might be dangerous. However, in his statements, he said he did not trust them completely: *Adili Chibuike (HC)* at [20]; *Adilli Chibuike (CA)* at [19]. On whether he had knowledge of the contents of the case, he claimed on the stand that one of them had, when passing him the case, opened the case, and both showed and told him that it only contained clothes and shoes. However, Adili said in his statements that he had no knowledge of the contents of the case: *Adili Chibuike (HC)* at [21]; *Adilli Chibuike (CA)* at [19]. Furthermore, he said at trial that he was to pass the US$4,900 cash to the person to whom he was to deliver the suitcase, and it would be used to pay for his food, hotel and other expenses, and to buy goods for him to bring back to Nigeria for his acquaintance to sell; whereas he had in his statements expressly denied that the money was to be passed to anybody in Singapore: *Adili Chibuike (HC)* at [22]; *Adilli Chibuike (CA)* at [19].

36 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [41]; *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [24].

37 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [34]; *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [24].

38 *Public Prosecutor v Adili Chibuike Ejike* [2017] SGHC 106 at [41]; *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [24].

39 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [4].

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Singapore without prior authorisation.[40] It considered that since Adili contended he did not know the drug bundles were hidden in the case, the central issue was whether he possessed those drugs.[41]

III. Decision of Court of Appeal

A. Wilful blindness properly describes a mental state short of actual knowledge

10 The Court of Appeal held, in line with earlier cases, that the element of possession also includes an inquiry into knowledge: an accused person must know of the existence of the thing in question that turns out to be a controlled drug.[42] The Court of Appeal stated that this "knowledge" to establish the element of possession differs from "knowledge" as an element of the offence.[43] The latter requires that an accused person knew the specific nature of the drug,[44] namely the actual controlled drug found in the "thing" (such as the bag or container) that the accused possessed at the material time.[45] The fact of possession (including knowledge of the existence of the thing in question that turns out to be a controlled drug) must be *proved* beyond reasonable doubt on the evidence, or *presumed* under s 18(1) of the MDA via the establishment of facts which trigger the presumption.[46]

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40 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [27].

41 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [29].

42 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [32]–[35]. See also *Sim Teck Ho v Public Prosecutor* [2000] 2 SLR(R) 959 at [13]; *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [34]–[35]; *Ali bin Mohamad Bahashwan v Public Prosecutor* [2018] 1 SLR 610 at [91]; *Zainal bin Hamad v Public Prosecutor* [2018] 2 SLR 1119 ("*Zainal bin Hamad*") at [14]; *Public Prosecutor v Andi Ashwar bin Salihin* [2019] SGHC 44 at [24]. It was observed in *Zainal bin Hamad* at [16] that where the Prosecution seeks to prove the fact of possession, once it proves that the accused had physical control over or possession of the package or container containing the thing in question, the court is entitled to infer that the accused had such knowledge of the thing. The accused must then discharge the evidential burden by raising a reasonable doubt that this was not the case.

43 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [32]–[35].

44 *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [35].

45 *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [24]; *Mervin Singh v Public Prosecutor* [2013] SGCA 20 at [24]; *Public Prosecutor v Abd Helmi bin Ab Halim* [2017] SGHC 135 at [81].

46 Namely, to prove beyond reasonable doubt that an accused person had in his possession or custody or under his control anything containing a controlled drug; the keys of anything containing a controlled drug; the keys of any premises in which a controlled drug is found; or a document of title relating to a controlled drug or any other document intended for the delivery of such drug (s 18(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed)); *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [40].

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11 The Court of Appeal then considered the meaning of "knowledge" in the context of the fact of possession.[47] The starting point would be the ordinary meaning of knowledge – that is, actual knowledge.[48] However, the courts have also recognised that the requirement of knowledge may be satisfied where it is proved that an accused person was wilfully blind, which is the legal equivalent of actual knowledge.[49] The Court of Appeal observed that the term "wilful blindness" has been used in two distinct senses, both resting on the premise that "the accused person *subjectively* suspects something and then deliberately chooses not to make further inquiries that would prove that which is suspected" [emphasis in original].[50] The first, an *evidential* sense of the term, is where the accused person's suspicion and deliberate refusal to inquire are treated as evidence which, together with all other relevant evidence, "might sustain a factual finding or inference that the accused person had *actual knowledge* of the fact in question" [emphasis in original].[51] In this first sense, the failure to inquire in circumstances that are "so suspicious it would have been natural for any innocent person in the accused person's position … to investigate" might persuade a court that the accused person actually "*did know* the truth" [emphasis in original].[52]

12 "Wilful blindness" in the second, *extended* conception describes a mental state falling short of actual knowledge, but is held to satisfy the *mens rea* of knowledge as it is the legal equivalent of actual knowledge.[53] On this view, "an accused person who does not in fact know the true position but sufficiently suspects what it is and deliberately refuses to investigate … to avoid confirming his own suspicions [may] be treated *as though* he did know" [emphasis in original].[54] The doctrine of wilful blindness in this sense is a "*very narrow qualification* to the requirement of actual knowledge … necessitated by the need to deal with accused persons who attempt to avoid liability by carefully skirting actual knowledge" [emphasis in original].[55] The Court of Appeal held that the *evidential* conception is more accurately described as a finding or

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47 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [41].
48 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [41].
49 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [41]. See also *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [104]–[106]; *Public Prosecutor v Amir bin Jubir* [2008] SGHC 80 at [70]; *Public Prosecutor v Muhammad Farip bin Mohd Yusop* [2014] SGHC 125 at [36]; *Public Prosecutor v Rahmat bin Karimon* [2018] 5 SLR 641 at [63]; and *Public Prosecutor v Shah Putra bin Samsuddin* [2018] SGHC 266 at [23].
50 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [44].
51 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [45].
52 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [46].
53 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [47].
54 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [47].
55 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [49].

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inference of actual knowledge *simpliciter* and, to prevent confusion, encouraged prosecutors, defence counsel and the courts to only use the term "wilful blindness" as denoting its *extended* conception.[56]

13 The Court of Appeal's preference for the latter characterisation of the doctrine is principled and provides clarity to the role of wilful blindness in establishing knowledge. Apart from its continuity from Singapore case law,[57] it is also consonant with the theoretical bases drawn on by the courts here.[58] Wilful blindness is said to impute knowledge to an accused person for legal purposes, where there is in fact no such knowledge; this construction of a greater mental element than the person actually had is by virtue of his own fault in closing his eyes.[59] Furthermore, the fault which justifies such a construction is "provided by [the accused

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56 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [50]. The Penal Code Review Committee in 2018 acknowledged these two versions of wilful blindness – on the one hand, a "distinct mental state from actual knowledge" deemed to be equivalent to actual knowledge; on the other, "an evidential basis for inferring actual knowledge" – but opined that *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 had reconciled the two positions to the effect that while wilful blindness is conceptually distinct from actual knowledge, "when proven to the required standard by the Prosecution, wilful blindness leads irresistibly to an inference of actual knowledge": *Penal Code Review Committee Report* (August 2018) at pp 174–175.

A similar distinction had previously been made by District Judge Toh Yung Cheong in "Knowledge and the Doctrine of *Mens Rea*" (2008) 20 SAcLJ 677, between what he termed the "inference view" and "identity view" of wilful blindness (These terms were previously employed by M Cathleen Kaveny in "Inferring Intention from Foresight" (2004) 120 LQR 81, in the context of intention and foresight in the English law of murder.) Under the first, actual knowledge "may be inferred from the fact that the accused was wilfully blind to the obvious"; under the second, actual knowledge is "defined to include both actual knowledge and its purest form and wilful blindness": at [10] and [13]. District Judge Toh further suggested that the Court of Appeal has favoured the latter in relation to knowledge and wilful blindness: at [15].

57 As noted in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [47], applied in the context of knowledge of the nature of the drug in *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [156]–[157]; *Public Prosecutor v Lim Boon Hiong* [2010] 4 SLR 494 at [84]; and *Public Prosecutor v Shah Putra bin Samsuddin* [2018] SGHC 266 at [25]–[33]. See also Chan Wing Cheong, Neil Morgan & Stanley Yeo, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2018) at paras 4.22–4.23.

58 Glanville Williams, *Criminal Law: The General Part* (Stevens & Sons, 2nd Ed, 1961) writes that actual knowledge means either personal knowledge or imputed knowledge. Furthermore, there is a "strictly limited exception" to the requirement of actual knowledge, namely, where a party who has his suspicion aroused but then deliberately omits to make further inquiries as he wishes to remain in ignorance is "deemed to have knowledge": at p 157.

59 Martin Wasik & Mark P Thompson, "'Turning a Blind Eye' As Constituting *Mens Rea*" (1981) 32(4) NILQ 328 at 330–331.

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person's] *advertence* to the particular fact, prior to his *deliberately* turning a blind eye" [emphasis in original].[60]

14 This article also agrees that the doctrine should, for clarity, be separated from an *inference* of actual knowledge (that he accepted the truth and had no serious doubt) from evidence that an accused person recognised the likely circumstances and did not inquire further.[61] This is partly because the language which may be employed in the evidential view – such as "the inference of knowledge [being] *irresistible* and … the *only rational inference* available *on the facts*" [emphasis in original][62] – can suggest virtual certainty on the part of the accused. However, it is established that the suspicion to found wilful blindness is of a lower degree than virtual certainty, which is equivalent to actual knowledge in its purest form.[63] Indeed, the Court of Appeal in *Tan Kiam Peng v Public Prosecutor*[64] ("*Tan Kiam Peng*") emphasised that wilful blindness should not be equated to virtual certainty.[65] Thus, the methods to establishing the knowledge of an accused person of a fact in question may be stated as (a) proving he had actual knowledge; (b) proving he was wilfully blind, the legal equivalent of actual knowledge; and (c) relying on any relevant statutory presumptions.[66]

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60 Martin Wasik & Mark P Thompson, "'Turning a Blind Eye' As Constituting *Mens Rea*" (1981) 32(4) NILQ 328 at 331; *The Zamora No 2* [1921] 1 AC 801 at 812: "In such a case [the accused person] flatters himself that where ignorance is safe, 'tis folly to be wise, but there he is wrong, for he has been put upon notice and his further ignorance … is a mere affectation and disguise." The Law Commission for England and Wales also endorsed treating a person as acting "knowingly" with respect to circumstances "not only when he is aware that it exists or will exist, but also when he avoids taking steps that might confirm his belief that it exists or will exist": Law Commission for England and Wales (Law Com No 177), *Criminal Law: A Criminal Code for England and Wales* vol 1 (1989) cl 18(a). Such an imputation of knowledge has also been made by the Supreme Court of Canada in *Sansregret v R* [1985] 1 SCR 570 at [21]–[24], for similar reasons and in the context of knowledge of the nature of consent.

61 Andrew Simester *et al*, *Simester and Sullivan's Criminal Law: Theory and Doctrine* (Bloomsbury Publishing, 5th Ed, 2016) at p 159.

62 *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [30]; as noted in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [45].

63 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [127], [129] and [157]; *Public Prosecutor v Ng Pen Tine* [2009] SGHC 230 at [112].

64 [2008] 1 SLR(R) 1.

65 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [127], [129] and [157].

66 Rephrase of *Public Prosecutor v Amir bin Jubir* [2008] SGHC 80 at [70], which addressed knowledge of the nature of the drug.

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B. The three-part test for wilful blindness in the context of knowing possession

15 The Court of Appeal in *Adili Chibuike* went on to establish the elements of wilful blindness, namely:

> (a) The accused person must have had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind.
>
> (b) There must have been reasonable means of inquiry available to the accused person, which, if taken, would have led him to discovery of the truth, at least in the context of the fact of possession.
>
> (c) The accused person must have deliberately refused to pursue the reasonable means of inquiry available so as to avoid such negative legal consequences as might arise in connection with knowing that fact.[67]

16 On the first element, the Court of Appeal stated that, first, the accused person must have "*personally* suspected the fact in question" [emphasis in original]; second, the suspicion must be "firmly grounded and targeted on specific facts", with the level of suspicion ultimately to have been such as to lead the accused person to investigate further.[68] The former emphasises the concern of the wilful blindness doctrine with an "accused person's *subjective* state of mind" [emphasis in original], thereby distinguishing the wilfully blind person from the negligent accused person.[69]

17 The Court of Appeal further introduced to the test for wilful blindness the above-mentioned second element. It stated that the second element is related to the third element of a deliberate refusal to inquire in the sense inquiry an accused person is expected to take that "the accused person's failure to inquire should not be held against him if there were no such means of inquiry available to him".[70] Thus, it must be established that "(a) there were means of inquiry *reasonably* available to the accused person; and (b) if taken, those means of inquiry would have led him to the truth he sought to avoid" [emphasis in original].[71] On the first point, the means of "should generally be reliable, appropriate in the circumstances … and capable of leading him to the truth within

67 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [51].
68 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [53]–[55].
69 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [53].
70 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [56].
71 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [56].

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a reasonable period of time".[72] On the second point, as the doctrine of wilful blindness "requires that the *essential* reason the accused person did not [obtain] actual knowledge was that he chose to look away" [emphasis in original], the true facts must have been "readily available to anyone disposed to discover them".[73]

18 On the third element, the Court of Appeal stated that the requirement for a *deliberate* refusal to inquire distinguishes wilful blindness from recklessness, "which also involves the conscious regard of a known risk".[74] That is, the court must be satisfied that the accused person's refusal to inquire must have been "motivated by a desire to deliberately avoid inculpatory knowledge … not out of, for instance, indolence, negligence or embarrassment".[75] It added that given the difficulty of proving an accused person's mental state, it will typically have to be inferred whether he deliberately refused to inquire *so as to avoid knowledge*.[76] That said, practically speaking, where the court has already found clear, targeted and grounded suspicion on the part of an accused person, coupled with a failure to make further inquiries, it could be rather unusual for it to infer anything *other* than that the refusal was deliberate.[77]

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72 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [57].

73 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [58].

74 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [59]. This distinction has also been mentioned in other cases, *eg*, *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [127] and [129]; *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 at [20]; and *Masoud Rahimi bin Mehrzad v Public Prosecutor* [2017] 1 SLR 257 at [55].

75 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [60].

76 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [60].

77 Such as that the failure to inquire was due to "indolence, negligence, or embarrassment", as contemplated in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [60]. While determining whether a refusal to inquire was deliberate is an intensely factual inquiry, where a failure to check has constituted "at best … only negligence or recklessness" (and insufficient to amount to wilful blindness), this was due to insufficiently strong suspicion (*Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 at [24], in which the facts of, *inter alia*, a consistent pattern of conduct in relation to dealing in drugs not involving the death penalty were recognised as "rather unusual" (at [29]). Similarly, in other cases where wilful blindness was not made out, this was due to a failure to cross that threshold level of suspicion: see, *eg*, *Public Prosecutor v Phuthita Somchit* [2011] 3 SLR 719 at [39] (where the High Court found that the accused person's suspicions were allayed when she was told the drugs were "not serious," and the decision not to inquire further was, therefore, as she trusted her co-accused, whom she was in a relationship with); *Public Prosecutor v Mas Swan bin Adnan* [2011] SGHC 107 at [84]–[87]; *Public Prosecutor v Muhammad Farip bin Mohd Yusop* [2014] SGHC 125 ("*Muhammad Farip*") at [43]; *Public Prosecutor v Ng Pen Tine* [2009] SGHC 230 ("*Ng Pen Tine*") at [145]. These cases concerned accused persons who were found to have rebutted the s 18(2) presumption, save for *Muhammad Farip*, where the s 18(1) presumption was rebutted in relation to the

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19 The Court of Appeal found that wilful blindness was not made out on the facts due to the second element.[78] This was because a person who opened the case and checked its contents would not have been able to discover the drug bundles, which were eventually found hidden within its inner lining.[79] Furthermore, even if Adili had asked, he would not have been able to find out about the hidden drug bundles from the two acquaintances who had facilitated the transaction. As the Prosecution accepted that Adili was not even told of the existence of the drugs in the suitcase, it seemed "an obvious inference that [they] were intent on keeping the truth of the matter from [Adili]".[80] Thus, the Court of Appeal held there were no reasonably available means for Adili to have discovered the presence of the drug bundles, and Adili could not be said to have been wilfully blind.[81]

20 It is argued that the availability of a reasonable means of inquiry should not be a requirement for determining wilful blindness. Whether an accused would objectively have been able to find out the truth does not sit comfortably with the focus of the doctrine, which is on an accused's refusal to inquire, and his subjective motivation for such refusal. Furthermore, in typical situations where an accused person is given a package to deliver and suspects they could be drugs (for example, if he was offered a substantial amount of money for the delivery), he would almost "certainly be given false answers and assurances" to the contrary.[82] The insertion of this requirement may thus unnecessarily constrain the operation of the doctrine; for example, in the context of knowing possession, to where the drugs in question were poorly concealed.[83]

21 The test for wilful blindness in knowing possession should therefore be the same two-part test as applied to the knowledge element.

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accused knowingly possessing a higher amount of drugs than agreed; and *Ng Pen Tine*, where knowing possession was not even made out on the part of the second accused person. It is therefore possible that this third element of *deliberate* refusal may be somewhat illusory in practice.

78 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [84], although the Court of Appeal subsequently suggested that the requisite level of suspicion had in fact not been made out (at [89]–[90]). This begs the question of whether, if the threshold level of suspicion was satisfied, the court would still have been prepared to find that Adili had no reasonable means of ascertaining the truth and was therefore not wilfully blind.

79 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [84].

80 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [86].

81 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [87]–[88].

82 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [129].

83 A similar concern was recently expressed by Christopher de Souza (Member of Parliament for Holland-Bukit Timah) during the review of Misuse of Drugs Act (Cap 185, 2008 Rev Ed): *Singapore Parliamentary Debates, Official Report* (8 July 2019) vol 94 (Oral Answers to Questions).

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While the Court of Appeal in *Adili Chibuike* left open the question of the operation of wilful blindness in relation to knowledge of the nature of the drugs, it opined provisionally that the two-part test should apply for the latter: that is, an accused person will likely be found to have been wilfully blind to the nature of the drug "if his suspicions were aroused but he nonetheless deliberately decided not to check".[84] The Court of Appeal reasoned that this was because, by this stage of the inquiry, the accused person would already be in knowing possession of the thing that turns out to be the drug, and "the question whether [he] had the means to scientifically verify the precise scientific name or formulation of the particular drug simply should not arise".[85] The Court of Appeal's provisional opinion is in line with the fact that the two-part test for wilful blindness is an established one in the context of knowledge of the nature of the drug,[86] and that the law does not require an accused to know the scientific name or effects of the drug; he may nevertheless be vested with knowledge of the nature of the drug according to s 18(2) of the MDA.[87] Nevertheless, it remains an open question whether the three-part test is only applicable to knowledge for the possession of drugs, or if it will be expanded to wilful blindness in respect of other offences.[88]

22 Alternatively, it is proposed that the second element of the three-part test may be reformulated to emphasise the subjective nature of *mens rea*.[89] A possible reformulation of the second element could be that the

84 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [62].
85 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [62].
86 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [125]–[127]; *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 at [24]–[28]; *Masoud Rahimi bin Mehrzad v Public Prosecutor* [2017] 1 SLR 257 at [55] and [75]. The two-part test has also been applied in the context of offences under the Immigration Act (Cap 133, 2008 Rev Ed) (see, *eg*, *Public Prosecutor v Koo Pui Fong* [1996] 1 SLR 734 at [20] and *Public Prosecutor v Yeo Siew Kim* [2001] SGDC 388 at [75]–[81]); the Customs Act (Cap 70, 2004 Rev Ed) (*Public Prosecutor v Muhamat Hafizi bin Ares* [2009] SGDC 125 at [17]–[20]); and offences under the Sedition Act (Cap 290, 2013 Rev Ed) and Undesirable Publications Act (Cap 338, 1998 Rev Ed) (*Public Prosecutor v Ong Kian Cheong* [2009] SGDC 163 at [50]–[51]).
87 *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [39].
88 Since *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili Chibuike*"), the High Court in *Public Prosecutor v Imran bin Mohd Arip* [2019] SGHC 155 at [73]–[78] noted the provisional comments in *Adili Chibuike* on wilful blindness in respect of knowledge of the nature of the drug, but nevertheless applied the three-part test.
89 As noted by the Court of Appeal in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [58], it may not be right to impute knowledge of a fact to an accused person who refuses to inquire when that fact was not reasonably discoverable (see para 17 above). Similarly, Edward Griew has argued that wilful blindness should be limited to the situation where a person "deliberately refrains from exploiting a possible source of confirmation, which he does not care to have, of the strong suspicion he entertains. If there is no such (known) source, or if such a source

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accused person knows that he has the means to determine the truth of that fact (to which he is said to have been wilfully blind).[90] That said, as with the proving of the first (suspicion) element of the doctrine, the inquiry into whether he knew that he had such means might often be a matter of inference from the circumstances,[91] "giving due weight, where necessary, to the credibility of the witnesses".[92] However, any practical obstacles in such proof should not detract from the fact that the courts are ultimately concerned with the accused's subjective state of knowledge at the time of the offence.[93]

23 The reasonable availability of means to discover or confirm facts in question is thus better considered as a *factor* in determining whether an accused deliberately refrained from further inquiries, or had sufficiently inquired. It is argued that older authorities to the effect that an accused seeking to obviate a finding of wilful blindness must demonstrate that he "took *reasonable* steps to investigate by making further inquiries that were appropriate to the circumstances" [emphasis in original][94] must now be read in light of more recent clarifications that a reasonable person's perspective "provides a useful evidential proxy" for the court to assess the true subjective state of knowledge of the accused.[95] In other words, the court in assessing an accused person's level of suspicion, deliberateness in not making further inquiries, or sufficiency of inquiries may compare

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does not yield 'actual knowledge', the most that can remain is unshaken belief": Edward Griew, "Consistency, Communication and Codification: Reflections on Two *Mens Rea* Words" in *Reshaping the Criminal Law: Essays in Honour of Glanville Williams* (Peter R Glazebrook ed) (Stevens & Sons, 1978) at p 72. That said, this second element was not part of the doctrine as described by Glanville Williams (see n 57 above).

90 As inspired by the test for wilful blindness proposed by G R Sullivan, on his interpretation of *Roper v Taylor's Central Garages, Ltd* [1951] 2 TLR 284: an accused person (A) is taken to know that fact (F), if (a) he suspects that F obtains; (b) he knows that he has the means to determine whether or not that F; and (c) he deliberately refrains from determining whether or not that F (G R Sullivan, "Knowledge, Belief, and Culpability" in *Criminal Law Theory: Doctrines of the General Part* (Stephen Shute & Andrew Simester eds) (Oxford University Press, 2002) at pp 213–214.

91 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [60].

92 *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [104], citing Abdul Malik Ishak J in the Malaysian High Court decision of *Public Prosecutor v Tan Kok An* [1996] 1 MLJ 89 at 101.

93 *Masoud Rahimi bin Mehrzad v Public Prosecutor* [2017] 1 SLR 257 at [56] and [59].

94 *Public Prosecutor v Lim Boon Hiong* [2010] 4 SLR 696 at [74]; *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [129]; *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [61].

95 *Masoud Rahimi bin Mehrzad v Public Prosecutor* [2017] 1 SLR 257 at [56]; *Public Prosecutor v Abd Helmi bin Ab Halim* [2017] SGHC 135 at [82]; Benny Tan Zhi Peng, "Wilful Blindness and Presumption of Knowledge under Section 18(2) of the Misuse of Drugs Act – Putting the Puzzle Pieces Together" *Singapore Law Gazette* (February 2016) at pp 40–41.

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his evidence against "what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in".[96] For example, if a reasonable person suspects a package he is meant to deliver contains capital drugs, he would likely employ some, if not all, reasonably available means to determine if this were true. If there were indeed no reasonable means of checking – for example, if the container is locked – a reasonable person might well refuse to carry the container. The extent of inquiries which a reasonable person would have made thus takes into account his or her reasonable means of checking, and may inform the court's findings as to an accused's deliberateness (as well as his credibility thereto).

C. Wilful blindness: Relevance to Section 18(1) **versus** *Section 18(2)*

24 The Court of Appeal in *Adili Chibuike* further held the s 18(1) presumption cannot be used to establish wilful blindness, as the knowledge presumed under s 18(1) refers exclusively to actual knowledge, and does not encompass knowledge which the accused person is said to be wilfully blind to.[97] This is because wilful blindness is not a state of mind that can be proved or disproved as a matter of fact, but is rather "a question of *mixed law and fact* … and [a] fact-sensitive inquiry" [emphasis in original], which cannot be the subject of a presumption such as s 18(1).[98] Furthermore, as established, the doctrine is properly used to describe a state falling a little short of actual knowledge (but is nevertheless held to be its legal equivalent), whereas the presumption operates to presume actual knowledge.[99] Thus, a presumption cannot logically be invoked to establish a fact which is accepted not to be true.[100] It further stated that the doctrine does not have any relevance in analysing whether the presumption under s 18(1) has been rebutted, which requires that the accused person establishes "the contrary of that which is presumed against him", namely by showing he did not *actually know* that the drugs were in his possession.[101]

25 On the facts, the Court of Appeal held that the Prosecution could not invoke the s 18(1) presumption to presume that Adili was wilfully blind to the presence of the drug within his possession, custody or

96 *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [37].
97 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [67].
98 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [66].
99 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [66]. See para 12 above.
100 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [66].
101 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [71].

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control.[102] Furthermore, as the Prosecution's case was that Adili had been wilfully blind to the existence of the drugs in the case, which implicitly entailed that Adili did not actually know of the existence of the drugs in the case,[103] it could not rely on s 18(1) to "presume the existence of [that] fact which it had accepted does not exist".[104] It was therefore also not necessary for the Court of Appeal to consider whether the presumption had been rebutted on the evidence.[105] Since the Prosecution had run its case on the basis that Adili did not have actual knowledge, what was left was for it to prove beyond reasonable doubt that Adili had been wilfully blind to the existence of the drugs hidden in the case.[106] However, the Prosecution was unable to establish that Adili had been wilfully blind, as discussed above.[107] Additionally, due to how the Prosecution had run its case, the Court of Appeal could not further consider whether, on the totality of the evidence and considering "other admittedly suspicious circumstances", Adili should have been found to have actually known of those drug bundles.[108]

26 The Court of Appeal also addressed the concern that their conclusion that wilful blindness may not be presumed under s 18(1) might be contrary to prior observations in *Tan Kiam Peng* and *Masoud Rahimi bin Mehrzad v Public Prosecutor*,[109] where it had suggested that the s 18(2) presumption does encompass the doctrine of wilful blindness.[110] It observed that the doctrine of wilful blindness could, however, be relevant in the context of the presumption of knowledge under s 18(2),

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102 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [71].
103 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [74].
104 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [80].
105 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [81].
106 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [82].
107 See para 19 above.
108 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili Chibuike (CA)*") at [88]; *cf* an inference of actual knowledge at paras 11 and 14 above. As indicated elsewhere, the likely effect of the decision in *Adili Chibuike (CA)* is that wilful blindness will be run as an alternative case to actual knowledge in the future, as it would appear the Prosecution would not be impeded from invoking the s 18 presumptions for the latter: Reuben Ong, "The Doctrine of Wilful Blindness and the Misuse of Drugs Act: *Adili Chibuike Ejike v Public Prosecutor* [2019] SGCA 38" *Singapore Law Watch Commentary* (June 2019). Separately, a suggested solution has been to reformulate the s 18 presumptions such that once physical possession is proved, there is a presumption of actual knowledge of the existence of the thing (which later turns out to be drugs). It is then this presumption of knowledge of possession which triggers the further presumption of knowledge of the nature of the drug: Sarah Phang Shih Min & Joshua Phang Shih Ern, "Is Ignorance Bliss? A Critique of the Requirement for "Knowing Possession" under the Misuse of Drugs Act: *Adili Chibuike Ejike v Public Prosecutor* [2019] SGCA 38" *Singapore Law Watch Commentary* (June 2019).
109 [2017] 1 SLR 257.
110 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [67].

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in analysing whether the presumptions have been rebutted;[111] that is, an accused person would be unable to rebut the presumption of actual knowledge of a particular fact if he could be shown to have been wilfully blind to that fact, as he would then be affixed with the legal equivalent of actual knowledge.[112] Still, the Court of Appeal observed that there could be difficulties with this view and left this question to be considered in an appropriate case.[113]

27 In light of the Court of Appeal's holding on the proper invocation of the wilful blindness doctrine and the fact that the s 18 presumptions are factual presumptions of actual knowledge, it follows that wilful blindness may similarly not be presumed under s 18(2). Rather, wilful blindness is an alternative route to the s 18(2) presumption to establishing knowledge of the nature of the drug, and the two may not be conflated. Thus, where an accused person is proven to have been wilfully blind, he will be found to have the legal equivalent of actual knowledge, and there is no question of the operation of s 18(2) as there would be no need to rely on the presumption.

28 It is further argued that the doctrine may also not be relevant in rebutting s 18(2). What is presently required for an accused person to rebut the s 18(2) presumption is that he must prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug;[114] that is, he should be able to say what he thought or believed he was carrying,[115] and the court will then assess the veracity of his assertion against the objective facts to determine whether his account should be believed.[116] It therefore appears that this is an altogether separate inquiry from wilful blindness, which is likely also the reason why the Court of Appeal in *Adili Chibuike* held that the doctrine had no relevance to rebutting the s 18(1) presumption.[117] Thus, if an accused person is proven to have been wilfully blind, he is affixed with the legal equivalent of actual knowledge, and it is then a question of whether the finding of wilful blindness can be obviated – by arguing that he lacked the requisite level of suspicion,[118] or that he had not deliberately refrained from inquiry, or had inquired sufficiently.

111 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [68].
112 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [68].
113 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [69].
114 *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [37]; *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 at [29].
115 *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [39]; *Norasharee bin Gous v Public Prosecutor* [2017] 1 SLR 820 at [25]; *Zainal bin Hamad v Public Prosecutor* [2018] 2 SLR 1119 at [23].
116 *Zainal bin Hamad v Public Prosecutor* [2018] 2 SLR 1119 at [23].
117 See para 24 above and *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [71].
118 See, *eg*, authorities at n 76 above.

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If the high threshold for the doctrine *cannot* be met, the Prosecution may nevertheless (a) invite the court to infer actual knowledge on the part of the accused person from evidence that he recognised the likely circumstances and did not inquire further; or (b) rely on the s 18(2) presumption, with the aforementioned evidence taken into account in assessing the veracity of the assertions by an accused person, who then seeks to rebut the presumption. As noted by the Court of Appeal, there may be difficulties with its observation that the Prosecution, where it has invoked the s 18 presumptions, may possibly rely on facts establishing wilful blindness to maintain that even if the accused can establish he did not actually know the fact in question, the presumptions should not be found to be rebutted (as this would otherwise "enable him to cheat the due administration of justice").[119] This is because, if an accused has proven he lacked knowledge of the nature of the drug on a balance of probabilities so as to rebut the s 18(2) presumption of actual knowledge, it is not clear why the Prosecution may then rely on facts evidencing a state falling *short* of actual knowledge – that is, wilful blindness – to argue that the presumption should not be rebutted. Concerns against cheating the administration of justice justify the imputing of actual knowledge *in the first instance*, where facts establish wilful blindness. To allow the doctrine (or its underlying concerns) to be again invoked to contest an accused person's proof of lack of knowledge not only confuses the two lines of inquiry, but may also be allowing the Prosecution a second bite of the cherry.[120]

IV. Conclusion

29 The decision in *Adili Chibuike* has affirmed the proper use of the wilful blindness doctrine as a substantive one which imputes knowledge to an accused person for legal purposes where there is in fact no such knowledge. Such imputation is justified because the accused person has "deliberately refused to make inquiries in the face of suspicion in order to

119 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [68]–[69].

120 On an alternative view, it is arguable that since for the offence to be made out, "knowledge" includes wilful blindness, the s 18 presumptions should be engaged for both knowledge and wilful blindness. On such a view, facts establishing wilful blindness ought to be relevant in militating against any attempts by an accused person to claim he lacked knowledge. But a question then arises as to the sustainability of the Court of Appeal's distinction between the doctrine as potentially relevant to rebutting s 18(2) but not s 18(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). After all, in both instances, an accused person must prove "the contrary of that which is presumed against him", which in turn includes knowledge: for s 18(1), that he did not have the drug in his possession (including knowledge of the existence of the thing that turns out to be a controlled drug); for s 18(2), that he did not have knowledge of the nature of the drug (see nn 100 and 113 above).

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cheat the administration of justice".[121] While this clarification is welcome, the insertion of an additional element to the established two-part test for making out wilful blindness may be questioned. It is furthermore unclear if a two- or three-part test will be relevant in the context of other forms of knowledge, including knowledge of the nature of drugs in offences under the MDA, as well as other offences. This article has proposed that the additional element, the availability of a reasonable means of inquiry to an accused person, is better considered as a factor, rather than requirement, in analysing whether he had deliberately refused to inquire, or had made sufficient inquiries. Such an approach would be more congruous with the subjective nature of *mens rea*, and the fact that objective facts and a reasonable person's perspective play an evidentiary role in assessing an accused's subjective knowledge.[122] Alternatively, the second element of the three-part test may be reformulated to reflect the aforementioned subjective nature of *mens rea*.

30 With *Adili Chibuike*, the Court of Appeal has also clarified that the presumptions in s 18 of the MDA are concerned with actual knowledge. As a result, it held that s 18(1) may not be invoked to presume wilful blindness, nor is the doctrine relevant in rebutting s 18(1). This article suggests that the doctrine should therefore not be relevant to establishing or rebutting the s 18(2) presumption, on the same logic.

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121 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [66].
122 See para 23 above.

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