

HONG KONG / JUDGMENT

HKSAR v. HUI KA LOK, SAM

[2026] HKCA 405**COURT**

Court of Appeal

DECIDED

11 March 2026

CASE / FILE NUMBER

CACC269/2021

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CACC 269/2021 and CACC 127/2025 (Heard together)

[2026] HKCA 405 On appeal from [2021] HKCFI 3684 and [2021] HKCFI 3686 CACC 269/2021 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO 269 OF 2021 (ON APPEAL FROM HCCC NO 148 OF 2020)

BETWEEN HKSAR Respondent and Hui Ka Lok, Sam Appellant

AND CACC 127/2025 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO 127 OF 2025 (ON APPEAL FROM HCCC NO 149 OF 2020)

BETWEEN HKSAR Respondent and Hu Mingjie Appellant

(Heard together) Before: Hon Macrae VP, Zervos JA and K Yeung J in Court Date of Hearing: 11 November 2025 Dates of Judgment: 11 November 2025 (for conviction in CACC 269/2021), 11 March 2026 (for sentence in CACC 269/2021 and CACC 127/2025) Date of Reasons for Judgment: 11 March 2026 (for conviction in CACC 269/2021)

JUDGMENT AND REASONS FOR JUDGMENT

Hon Zervos JA (giving the Judgment and Reasons for Judgment of the Court):

Introduction

This case concerned the importation of a large quantity of cocaine shipped in a container from Colombia to Hong Kong. It was a major undertaking, involving a number of people performing different roles in an international drug trafficking syndicate. On 27 August 2018, upon delivery of the container to a warehouse, three individuals were arrested by Customs officers, namely the two appellants, Hui Ka Lok, Sam (referred to as Hui) and Hu Mingjie (referred to as Hu), and a Colombian national, Ochoa Villegas Luis Carlos (PW12 at Hui's trial, referred to as Carlos). In the Magistrate's Court, the three accused were originally charged with trafficking the cocaine found in the container, with Hu being additionally charged with manufacturing and trafficking the cocaine found in his home. The counts were subsequently amended so as to allege that the three accused attempted to traffic the cocaine in the container, that Hu trafficked the cocaine in his home, and that Hui perverted the course of public justice. On 9 April 2020, Carlos pleaded guilty to attempting to traffic the cocaine in the container. He was committed to the High Court for sentence. On 29 June 2020, Hu pleaded guilty to attempting to traffic the cocaine in the container and trafficking the cocaine in his home. He was committed to the High Court for sentence. On the same day, Hui pleaded not guilty to the counts he faced and was committed to the High Court for trial. He stood trial before Campbell-Moffat J (the judge) sitting with the jury. On 6 July 2020, an indictment was filed in the High Court charging Hui with attempting to traffic the cocaine in the container, together with Hu and Carlos, and perverting the course of public justice. On 28 September 2021, the indictment was amended by adding further alleged conspirators to the count of attempting to traffic the cocaine in the container, namely "John Andres Gomez Henad, also known as Mono, Li Ka-kuen and other persons unknown". On 21 October 2021, the judge ordered that the count of perverting the course of public justice be severed from the indictment and tried separately after the trial of the count of attempting to traffic the cocaine in the container. A re-amended indictment was filed containing only the count of attempting to traffic the cocaine in the container, while the count of perverting the course of public justice was separately indicted in HCCC 148A/2020. On 26 October 2021, the indictment was further amended by reframing the attempt to traffic count as a conspiracy to traffic the cocaine in the container. The counts The counts Hui and Hu faced were as follows: Hui, between 4 April 2018 and 27 August 2018, in Hong Kong and elsewhere, conspired together with Hu, Carlos, John Andres Gomez Henad (Mono), Li Ka Kuen and other persons unknown to traffic 18,692 grammes of cocaine (the conspiracy count); Hu, between 22 and 27 August 2018, in Hong Kong, together with Hui and Carlos, attempted to traffic in the same drugs in the conspiracy count (Count 1) and, additionally, on 27 August 2018, in Hong Kong, trafficked in 775.63 grammes of cocaine (Count 2), which was unconnected to Count 1. On 15 November 2021, Hui was convicted of the conspiracy count after a trial and sentenced by the judge to 37 years and 3 months' imprisonment. Hu pleaded guilty to Counts 1 and 2 and was sentenced by the same judge to 25 years and 2 months' imprisonment. Both Hui and Hu were sentenced on 17 November 2021. In challenging their sentences, they rely on the Court of Appeal's revised sentencing guidelines for large quantities of heroin, cocaine and Ice in HKSAR v Huang Ruifang (No 3), handed down on 5 March 2025. On 11 February 2022, the judge ordered that the count of perverting the course of public justice against

Hui in HCCC 148A/2020 be kept on the court file and marked not to be proceeded with without leave of the court or the Court of Appeal. The grounds of appeal On 14 December 2023, Hui was granted leave to appeal against his conviction on Ground 7 only (out of seven original grounds), and against sentence on Grounds 1, 2 and 3. On 17 October 2025, Hu was granted leave to appeal against his sentence, even though the leave application was out of time, having been lodged on 23 May 2025. Hui has separate legal representation in his conviction and sentence appeals. Mr Joe Chan, with Mr Oscar Tam, represent Hui in his appeal against conviction, and Mr Hanif Mughal, with Ms Teresa Yu, represent him in his appeal against sentence. After the leave hearing, Mr Chan filed a fresh set of Perfected Grounds of Appeal against conviction, breaking up the original Ground 7 into two grounds, now referred to as Grounds 1 and 2, which read: Ground 1: The judge failed to direct the jury on the co-conspirators' rule in respect of the testimony of a co-conspirator, regarding statements allegedly made in furtherance of the conspiracy, despite explicit reliance on such statements in the prosecution closing speech to establish the existence and extent of the conspiracy. Ground 2: The judge ought to have, but failed to, direct the jury that any evidence from a co-conspirator cannot be used to prove the truth of any express or implied assertion underlying another's participation in the conspiracy. Mr Mughal continues to rely on the three grounds of appeal against sentence pleaded in his Perfected Grounds of Appeal filed for the leave hearing, which are that: Ground 1: The starting point adopted by the judge was on the high side. Ground 2: The enhancement of 4 years imposed for Hui's role as a member of the non-senior management was excessive. Ground 3: The sentence of 37 years and 3 months' imprisonment is manifestly excessive. In granting leave to appeal against sentence, the Single Judge noted that there was an issue concerning the appropriate starting point for cases of this type, involving very large quantities of a dangerous drug, as well as the level of enhancements that should be imposed for aggravating factors, particularly when considering the totality of those enhancements alongside the high notional starting point. Hu is not legally represented and appears in person. He argues that he should benefit from the revised sentencing guidelines and receive a reduction in sentence. Since there are common facts and overlapping issues, on 17 October 2025 the court directed that Hu's appeal be heard together with Hui's appeal. The prosecution case It was alleged against Hui that, between 4 April 2018 and 27 August 2018, he conspired with Hu, Carlos, Mono, and other persons unknown to traffic in 18,692 grammes of cocaine, which had a street value of HK\$28,314,355.65. On or about 22 August 2018, a shipping container was offloaded at a berth at Kwai Chung Container Terminals, and the dangerous drugs in the conspiracy count were discovered concealed inside the four door frames of the container. The container was arranged to be shipped from Colombia in May 2018 and was loaded in Colombia in July 2018. The consignee was ECO Advance Hong Kong Limited, of which Hui was recorded as the manager. In the afternoon of 27 August 2018, Customs officers conducted a controlled delivery of the container, which had a CCTV camera installed inside, to its destination, namely a warehouse in Yuen Long. Carlos, Hu and others were arrested inside the warehouse while attempting to remove the drugs from the door frames. At 7:20 pm, Hui, who had been sitting in the driver's seat of a private car parked outside the warehouse since 6:45 pm, was also arrested. He had the importation documents relating to the container in his possession. Under caution, he claimed that he was driving two people to the warehouse for a reward of around

HK\$5,000. The prosecution alleged that Hui was the person who gave instructions to Janci Ng, the manager of Ports Containers Limited, and others concerning the container: its receipt at Kwai Chung Container Terminals, its collection by the transportation company, and its delivery to the warehouse. Hui also sought a suitable warehouse in advance to store the container, with assistance from Tsoi Chun Pui (PW1), a real estate agent, who arranged for him and Carlos to inspect several warehouses. After negotiation, Hui agreed to rent the warehouse in question, although the lease was signed by Yip Wai Lun (PW2), a former colleague of Hui who was also present during the inspection. Hui and Carlos also went to purchase high-quality cutting tools to cut open the door frames of the container and retrieve the drugs. Hu, on the other hand, was involved in liaising with the logistics company driver to arrange for the storage of the container. He delivered all necessary equipment to the warehouse for Carlos to use and controlled access to the warehouse. In addition, when he was arrested inside the warehouse, two keys were found on him, which could be used to access Room 2, 5/F, Say Hay House, No. 88 Hak Po Street, Mongkok, in which the cocaine, the subject of Count 2, was discovered. The conspiracy also involved Mono, who was the nephew of Carlos's wife, and appears to have been one of the individuals orchestrating the drug trafficking. In his evidence, Carlos admitted his guilt in attempting to traffic in the dangerous drugs together with Hui and Hu. He testified that, sometime in August 2018, he received a call in the United States from Mono, who asked him to travel to Hong Kong with his wife for a holiday. Mono arranged for him to meet his "good friend", Hui. When Carlos arrived at the airport, he telephoned Hui, who made arrangements to meet him at iSquare. Hui took Carlos and his wife to a hotel after they had had something to eat. Hui told him that Mono was in China, but had been denied entry into Hong Kong. Hui went to China to try to bring Mono into Hong Kong as his guarantor, but was unable to do so. Carlos moved from the hotel to an apartment that Hui had arranged for him. Mono had told him that Hui would take care of all his expenses. He explained how he got involved in attempting to traffic the drugs and the discussions he had with Mono and Hui about extracting the drugs concealed in the container that was to be delivered. "A. ... I don't remember exactly when was the day that we spoke to Sam, Saturday or Sunday. Mono -- when we spoke to Mono on the phone on Saturday night, Mono did tell us the truth about the drug situation. Q. What did he say? A. He told me what the situation was; that he was in a very complicated situation and that he was being accused of some drug situation. That's why he wanted to come to Hong Kong to do the job that I did afterwards for him. Q. Right. A. But since he was not allowed to enter Hong Kong, so he thought -- he came up with this wonderful idea to find me. And he had a more complicated situation which was if he could not find someone he could have trusted to do this, he would have had to be responsible for these drugs in some way or another. So Mono was in a very dangerous situation because if these drugs did not go to their final destination, because he would have had to suffer the consequences, he would have had to pay this whether in cash or with his life. Q. And did he ask you to do anything? A. He asked me the favour to help him. Q. And what did he ask you to do? A. He tried to persuade me, telling me that he was very worried, that he was very afraid, he was very scared, that the only person that could have helped him at that moment was me and that's why he was asking me. Q. Asked you to do what? A. He was asking me to help him open this container. Q. What other details did he give you, if at all, during that conversation? A. That the container supposedly was supposed to have

arrived on 21st, and that if I was able to help, Sam was in Hong Kong and Sam was there to support me, to help me in any way with anything that I needed. Q. Needed for what? A. To open the container; for example, to buy tools, to find a storage facility, a warehouse, basically this. Q. All right. And what did you say to his proposal? A. Finally, I accepted his proposal, but at the same time I was a bit -- I wasn't -- I was undecided. Q. All right. But you said you finally accepted it, why did you do that? A. He convinced me. Because he convinced me." ... "Q. Were you told specifically what you had to do with the container? A. What I have been saying. The drug was where it was, so you needed to cut for them to be able to take it out. And once the drug would have been taken out, to fix the things as they were before because this container needed to go back to its destination origin -- origin of destination. Q. Now you just mentioned that the drugs had to be taken out 'for them'. Who is 'them'? A. Sam and there was another guy that was there with him. Q. Right. And when you say another guy with him, where are you referring? Where at? A. That guy, well, I did not know this guy and I did not know him name." ... "Q. Now you said you had to open the container to get the drugs. A. Yes, sir. Q. Who was going to get the drugs? A. As far as I know -- as far as -- the way they tell me was that Sam and the other guy were -- that they, the two of them, were going to be in charge of this. In reference to what they were going to do with this or where this was going to go, I do not know anything about this. I was not interested in this. The only thing that I said I would do was to open the door and to do some soldering back. Q. All right. And who was present during this conversation about what you had to do. A. Only two persons; Sam and the other guy." As for his discussions with Hui on Saturday concerning the drugs in the container, Carlos's evidence was as follows: "Q. ... And can you remember what was said approximately when you spoke to Sam on that day, on the Saturday? A. Yes. We spoke about buying the tools, to find a warehouse; that we were going to do this on Monday. Sam also explained to me where the drugs were hidden. And that on Monday he was going to show me a container similar to the one that was arriving for me to get familiar for when I was going to do the job. Q. Now you just said Sam told you where the drugs were hidden. Can you remember what he actually said approximately? A. He explained to me that the drugs were hidden in the two doors of the container; that they were in the vertical part of the -- the doors have four parts. Q. All right. Anything else that he said? A. That he was going to be there with me, helping me. Q. All right. Now you mentioned tools were discussed. A. Yes, sir. Q. And what was that discussion about? Can you tell us. A. I explained to him what type of tools we needed to buy. Basically, the type of tools needed and the items needed to do this. Q. Right. Needed to do what? A. To be able to open the door - the doors to take out the drug." After discussing the matter with Mono and Hui, Carlos and Hui went out to buy tools. They also inspected the warehouse that Hui had rented. Hui informed him that the container had arrived on 21 August 2018, but that he had received a call from the Customs Department saying that it would not be released. Hui was "very worried" and contacted Mono about it. On 25 August 2018, Carlos and his wife went to China to see Mono, who confirmed that they were importing illegal drugs into Hong Kong, and that the problem with the container had been fixed. When Carlos returned to Hong Kong, Hui was waiting for him and drove him to the warehouse. Near the warehouse, Hui told Carlos to get into the vehicle driven by Hu. On arrival, Hui opened the door to the warehouse and the three men entered. Hui showed Carlos where the tools were located, next to the container. Hui indicated to Carlos the doors that

he had to break open to retrieve the drugs. Carlos inspected the door and noticed that it had new screws and bolts and that there was a smell of fresh paint. He thought this was “very strange” and was concerned. “Q. Did you express your concern to any person? A. I said to Sam, ‘This is very strange because this container is coming from Colombia, this journey will take months, how come there is this fresh paint smell?’ Q. And did he respond to your question? A. He didn’t show any concern. He said, ‘Oh, do it quickly so we can go.’ Q. All right. So then what happened? A. I stayed there with the other guy. Sam went outside and closed the door. And I started to cut the left corner - left upper corner of the door. Q. And to reach the left upper corner did you use any particular apparatus that you can recall? A. First, the ladder because I needed to go up, and then I could see all the machines there. Q. Right. And you commenced doing what exactly? A. Logically, I started to cut. Q. Cut. And how long did you cut for that you can remember? A. This was something very simple to do. I’m familiar to doing this kind of work, so around 15 minutes. Q. Fifteen minutes. And was that just on one area of the container or the total container? A. Only that corner. Q. Right. And you cut it open or part of it? A. Completely open, yes. Q. Right. And what did you see inside, if anything. A. I saw some plastic packages. Q. Yes. And what did you think that was? A. Logically, I mean we know it because one can suppose the drugs were there. Q. Thank you. Now when you saw the container and you said there was some fresh paint and it caused you some concern, other than Sam did you express your concern to any other person? A. Perhaps using WeChat, I may have sent Mono a message. When I was inside the warehouse, I kept informing Mono what was going on. Q. Right. And was he responding to what -- your information? A. It was a bit complicated because the communication was very delayed as well. Q. I understand that, but did he respond to you? A. Finally, he replied. Q. What did he say that you can recall? A. As far as I remember he told me to leave the warehouse quickly. Q. And did you speak to Mono about the concerns or the instruction you had received from Mono -- speak to Sam, sorry, about the instructions you received from Mono to leave the warehouse quickly? A. I think I send Sam a picture of some artifacts and piece of something that I discovered when I started to do the cutting. Q. You sent a picture. Who did you send it to? A. I sent this picture to Sam. Q. And why did you send him a picture? A. My apologies, I think I need to clarify something here. I also -- I believe I also did send this picture to Mono. Q. All right. INTERPRETER: He sent this picture to both of them. Q. Okay. And why did you send the picture to Sam? A. I found a big package that was in the container at the back which was covered with scotch tape in the same colour as the container. What was inside looks like someone had already been there to do something. I immediately looked carefully and I realised at that moment that it was something related to the police. Q. All right. A. For this reason, I send this picture to these two persons in order to tell them that they had guaranteed me that nothing would have happened to me and the proof -- the truth was there that they had not said anything to me that they set me up. Q. And when you say they had guaranteed nothing would happen to you, who guaranteed that? A. Both, Sam and Mono. Q. Thank you. A. I was just going to cut the door to help Mono, but I was not involved in this operation. Q. All right. Now when you said you sent a picture to Mono and Sam, did you get any reply from -- response from Mono first? A. Yes. Q. What did he say? A. To leave quickly. Q. All right. Did you get a response from Sam? A. I think no answer from -- no reply from Sam. At that particular moment the police arrived. I heard people outside screaming, a lot of

people screaming and then at that moment I realised that it was the police that was outside and this was the case.” Carlos exchanged WhatsApp and WeChat messages with Mono, and WeChat messages with Hui during the course of this offence. He was questioned about the messages as they recorded his communications with Mono and Hui about events he had explained in his evidence. The photographs depicting the contents of two mobile telephones (exhibits P95 and P102) seized from Carlos on 29 August 2018 were adduced in evidence as Admitted Facts. Stored inside exhibit P95 were text messages exchanged between Carlos and Mono, and between Carlos and Hui. Screenshots of those messages were copied onto an optical disc (exhibit P106) and printed out as exhibit P250, with certified English translations (exhibit P250a) and an aide-memoire (exhibit P250b). It was specifically stated that the photographs and statements contained in exhibit P250 were admissible as prima facie evidence of facts and matters contained therein without further proof, and that the certified English translations of the messages in Spanish were also admissible as prima facie evidence of the facts and matters contained therein. Carlos exchanged numerous messages with Mono and Hui regarding the delivery of the container and Hui’s role in accessing the container. It is appropriate to highlight the following messages from Hui to Carlos as they evidence Hui’s key role in the conspiracy. On 26 August 2018, Hui sent a message to Carlos, “Carlos, please trust me. I’ll do everything to be sure that the job ends well and work without any problems. I want all to be happy and we can celebrate tomorrow night.” On 27 August 2018, Hui took Carlos to the warehouse to access the container, while Hui remained outside. When Carlos noticed something suspicious about the container, he messaged both Mono and Hui about it and sent a series of pictures to Mono and a picture to Hui depicting what he had found. At 19:18 hours that day, Hui told Carlos after receiving the picture, “Carlos, if they were following you they would be here since this morning. We have from 5 to 6 people outside watching you. It is better do it quickly and get it out. Is that possible?” At 19:23 hours, Mono told Carlos, “Get out of there. If that looks that way, it’s better to you to get out.” The defence case Hui elected not to give evidence himself, but called three defence witnesses, including Hu (DW1 at Hui’s trial), and two character witnesses, his friend and his brother. His defence was that he made no confession at the scene and that it was a fabrication by the Customs officers. He was not a knowing party to the conspiracy. Hu testified that he had no dealings with Hui prior to 27 August 2018. He said the only reason that Hui came into the warehouse with them was to talk to the foreigner for him because he could not speak his language. He sought to limit the case to involvement between himself and Carlos, but acknowledged by his guilty plea that he cooperated with Hui to retrieve the drugs from the container. Hui’s conviction appeal Mr Chan submitted that the prosecution relied on the co-conspirators’ rule to adduce the text messages between Carlos and Mono, in Hui’s absence, to prove the extent and degree of participation of others in the conspiracy. He argued that, in doing so, the prosecution also relied on the truth of the acts and statements to prove the conspiracy and Hui’s participation in it, thereby engaging the rule against hearsay. He submitted that the judge should have given the jury appropriate directions as to how the hearsay evidence could be used against Hui. He contended there was a risk because the content of communications between Carlos and Mono, as referred to in Carlos’s evidence, if accepted as true, could be regarded as evidence of the existence of a conspiracy to which Hui was a party. Mr Chan argued that prosecuting counsel, in his closing address, referred

to the text messages exchanged between Carlos and Mono, and between Carlos and Hui, and invited the jury “to use them to decide whether there was a conspiracy, and if so, who was in it”. He also referred to other passages in the prosecuting counsel’s closing address, but the evidence referred to arose from the oral testimony of Carlos. He argued that the judge did not deal with this aspect of the evidence in her directions to the jury. He contended that this evidence should either have been adduced in conformity with the co-conspirators’ rule, with appropriate directions from the judge, or through the route which permits the admission of “acts or declarations of one alleged conspirator made outside the presence of the others provided such evidence is not led to prove against the others the truth of any assertion or implied assertion made by the actor or the maker of the statement”. Mr Chan submitted, as an alternative argument, that, even if the hearsay evidence was adduced by the prosecution as circumstantial evidence and the co-conspirators’ rule was not engaged, the jury might have used it in an impermissible manner in the circumstances of the case, constituting a miscarriage of justice. Ms Denise Chan, for the respondent, submitted that the text messages were not adduced by the prosecution to prove the truthfulness of their content. Ms Chan pointed out that the messages included those sent to Carlos by Hui himself, which demonstrated their interaction and could form the basis for drawing inferences as to his knowledge. She submitted that evidence of Hui’s involvement in the conspiracy was adduced through agreed evidence and the oral testimony of witnesses, and not pursuant to the co-conspirators’ rule. Moreover, the text messages exchanged between Mono and Carlos were adduced as circumstantial evidence to establish a conspiracy, not to implicate Hui under the co-conspirators’ rule (*Oei Hengky Wiryo v HKSAR (No 2)* ; *Vivien Fan v HKSAR*). Discussion The co-conspirators’ rule permits evidence of the acts and declarations of one or more conspirators in furtherance of the conspiracy to be adduced to prove the extent and degree of participation of another or others in the conspiracy and the nature and extent of the conspiracy. In order to lay the foundation for the reception of such evidence, there must be independent evidence linking the defendant to the conspiracy. To this end, the foundation evidence must be admissible against the defendant and amount to at least reasonable evidence. In *Oei Hengky Wiryo, McHugh NPJ*, with whom the other judges agreed, explained the rule in the context of a bookmaking case. In that case, Oei was charged with conspiring with one Kam to commit bookmaking. At the trial of Oei, at which Kam was not a co-accused, the prosecution adduced certain documents seized from Kam’s home and office that appeared to record bets on soccer games. There was no evidence that those documents were either written by Kam or Oei or on Oei’s instructions. The question of law was whether such documents, which were apparently unconnected to Oei, were admissible against him for any purpose other than to prove Kam’s participation in the unlawful enterprise alleged. McHugh NPJ explained: “30. The prosecution contended that, in tendering evidence of the documents seized from Kam’s home and office, it did not breach the hearsay rule. Nor did it need to rely on the co-conspirators’ rule. Under the co-conspirators’ rule, the acts and utterances of an alleged co-conspirator done or made in furtherance of the common purpose of the conspiracy are evidence against another accused charged with that conspiracy if there is reasonable evidence apart from those acts and utterances that the accused was a participant in the conspiracy: *Ahern v The Queen* (1988) 165 CLR 87 at p.100. The prosecution argued that, it did not have to rely on the co-conspirators’ rule because

tender of the documents, as evidence against Oei, was supported by another principle expressed by the High Court of Australia in *Ahern v The Queen* at p.93 where the Court said: In conspiracy cases a clear distinction is to be made between the existence of a conspiracy and the participation of each of the alleged conspirators in it. Conspiracy is the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means and it is the fact of the agreement, or combination, to engage in a common enterprise which is the nub of the offence. This fact can seldom be proved by direct evidence of the making of an agreement and must in almost all cases be proved as a matter of inference from other facts, that is to say, by circumstantial evidence. For this purpose, evidence may be led which includes the acts or declarations of one alleged conspirator made outside the presence of the others provided such evidence is not led to prove against the others the truth of any assertion or implied assertion made by the actor or the maker of the statement. It may take the form of evidence of separate acts or utterances from which the fact of combination might be inferred. Led in that way, it is not hearsay and is not dependent upon some circumstance to take it outside the hearsay rule, such as an implied authority making the acts and words of one the acts and words of the other. 31. The accuracy of this statement of principle is not open to doubt. Hence, it follows that the documents found in the office and home of Kam — Oei's alleged conspirator — could be admissible against Oei to prove the conspiracy alleged and his part in it as long as they were not tendered to prove against Oei 'the truth of any assertion or implied assertion made by' the author of the documents. Whether they were admissible on this limited basis depends on whether the documents — although not themselves proving the truth of the entries they contained — in conjunction with other evidence tended to prove an issue in respect of the charge of conspiracy." In the present case, the prosecution did not rely on the co-conspirators' rule as set out in *Vivien Fan*, but rather invoked the rule in *Ahern* and as applied in *Oei Hengky Wiryo*. This rule permits the admission of evidence of acts or declarations of one alleged conspirator made outside the presence of the others provided that such evidence is not led to prove against the others the truth of any assertion or implied assertion made by the actor or the maker of the statement. As mentioned by the judge, the prosecution case mainly relied on the evidence of Carlos, who gave a direct account of his dealings with Hui and of Hui's involvement in the conspiracy. There was independent or uncontested evidence supporting Carlos's testimony about the conspiratorial agreement. The judge explained to the jury that as Hui faced a conspiracy count, they had to be satisfied that he was a party to an agreement to traffic in dangerous drugs and that he intended to carry out that agreement. In proving the conspiracy, the judge instructed the jury that they "look at all the evidence as to what occurred during the whole of the period, including the behaviour of the other conspirators where you have evidence of it." She also gave detailed instructions to the jury regarding circumstantial evidence and inferential reasoning. The text messages were relied upon by the prosecution to support Carlos's testimony and to establish the alleged conspiracy by inference from the circumstantial evidence. The text messages between Carlos and Mono in Hui's absence were admissible against Hui, as they were not tendered to prove the truth of what had been recited or asserted but, in conjunction with other evidence, tended to prove the existence of the alleged conspiracy. The defence raised no objection to the prosecution's reliance on the text messages exchanged between Carlos and Mono, and between Carlos and Hui, which were

adduced into evidence by way of Admitted Facts. Moreover, it was agreed that the contents of the text messages were admissible as prima facie evidence of the facts and matters contained therein without further proof. The defence also accepted there was a conspiracy to smuggle the drugs into Hong Kong but maintained that Hui was not a party to it. Furthermore, the defence relied on the text messages between Carlos and Mono to challenge Carlos's credibility as a witness of truth. Defence counsel in his closing address to the jury stated: "And when you look at all the WhatsApp messages in the aide- memoire, all the majority of the conversations was between Mono and Carlos, never between Carlos and Sam. You may think or you may wonder, were they trying to keep Sam out of the picture? So the actual agreement was between Mono and Carlos, and Sam was just a person helping them. And you've got to ask yourself, maybe Sam did not know what it's all about." Defence counsel's comment that there was a lack of messages between Carlos and Hui was not correct. We have already referred to some of the text messages between them which, when considered in the context of the surrounding events, implicated Hui in the conspiracy. There was overwhelming direct evidence of Hui's knowing participation in the alleged conspiracy, including facilitating the importation of the container into Hong Kong, renting a warehouse to store it upon delivery, and his dealings with Carlos, such as providing him with accommodation, accompanying him to purchase tools, and organising him to retrieve the drugs from the container. It was complained that prosecuting counsel invited the jury to consider the text messages that Carlos had with Mono and Hui to decide "whether there was a conspiracy, and if so, who was in it". No issue can be taken with the text messages between Carlos and Hui, as they were not acts and declarations in Hui's absence. Similarly, the judge instructed the jury that they could use the agreed text messages to assess Carlos's credibility and, as suggested by prosecuting counsel, the evidence of the lay witnesses together with the agreed text messages to demonstrate "several acts in furtherance of this agreement to traffic in dangerous drugs." The prosecution was not relying on the truth of the contents of the messages between Carlos and Mono, but rather on what had been said between them. There was no objection as to their admissibility, as it was agreed that the statements contained in them were admissible as prima facie evidence of the facts and matters stated therein without further proof. Furthermore, what was said between Carlos and Mono was merely part of the circumstantial evidence from which to infer the conspiracy to traffic in the drugs, the existence of which the defence accepted. The evidence implicating Hui consisted of his own acts and declarations, which proved his participation in the conspiracy. In these circumstances, there was no risk that the jury might have used the text messages in an impermissible manner. We were not persuaded that a material irregularity had occurred in respect of the impugned text messages and therefore dismissed Hui's appeal against conviction. Hui's and Hu's sentence appeals When sentencing Hui, the judge followed the previous sentencing guidelines in HKSAR v Abdallah, and adopted a starting point of 31 years and 3 months' imprisonment based on an arithmetic calculation for 18,692 grammes of cocaine. The judge referred to HKSAR v Herry Jane Yusuph when considering Hui's role and culpability. She said that his role "was one of management but not top management, far higher though than a middleman and someone who made decisions and put them into effect through others", and enhanced the starting point by 4 years to 35 years and 3 months. She treated the importation of the dangerous drugs as an aggravating factor and further enhanced the starting

point by 2 years, to 37 years and 3 months. She stated there was no valid mitigation to justify a discount on the sentence. The resulting sentence was 37 years and 3 months' imprisonment. When sentencing Hu, the judge noted that he had a previous conviction for conspiracy to traffic in a dangerous drug, for which he was sentenced to 4 years' imprisonment in May 2013. We observe that the judge did not take this matter into account when determining the sentences for Counts 1 and 2. The approach that she took in sentencing Hu was as follows. As for Count 1, the judge used the same initial starting point of 31 years and 3 months' imprisonment as she did for Hui. She enhanced this by 1 year on the basis of Hu's role and culpability, describing him as "commercially involved in this enterprise, albeit at a lower level than Hui" and as "a responsible and trusted member of an international drug-trafficking team, not just a courier or a storekeeper". She further enhanced the starting point by 2 years based on the importation of the dangerous drugs, to 34 years and 3 months. She reduced the notional starting point by one-third for his guilty plea to 23 years and 2 months' imprisonment (the correct calculation should have been 22 years and 10 months). As for Count 2, which involved 775.63 grammes of cocaine, the judge adopted a starting point of 20 years and 9 months' imprisonment, based on an arithmetic calculation in accordance with the previous guidelines. She enhanced the starting point by 1 year, taking into account Hu's role as the distributor and middleman. After applying a one-third discount for his guilty plea, she sentenced Hu to 14 years and 6 months' imprisonment. She ordered 2 years of the sentence on Count 2 to run consecutively to the sentence on Count 1, resulting in a sentence of 25 years and 2 months' imprisonment. Both Hui and Hu submit that they are entitled to a reduction in their sentences under the revised sentencing guidelines. Ms Chan, for the respondent in Hui's and Hu's sentence appeals, accepts that each appellant is entitled to a reduced sentence under the revised sentencing guidelines, recently affirmed in *HKSAR v Sum Ka Wa*, which held that, save in exceptional cases, the sentence for trafficking in a dangerous drug should not normally exceed 35 years' imprisonment. Furthermore, this Court recently stated in *HKSAR v Lam Man Tak* that applicants or appellants who were sentenced on or after 18 September 2018 should derive benefit from the revised sentencing guidelines in *Huang Ruifang* (No 3). Under these revised guidelines, the quantity of 18,692 grammes of cocaine narcotic falls within the band of 15,000 to 30,000 grammes with a corresponding sentence of 27 to 30 years' imprisonment. Discussion For the conspiracy count, we consider that a starting point of 27 years and 9 months' imprisonment would be appropriate, given the quantity of narcotic drugs involved. Hui played a senior role in this criminal enterprise, organising the importation, delivery and storage of the drugs, making key decisions to effect the smuggling of the drugs into Hong Kong. Underlying his role and culpability was the international element in its classic form, involving an international drug syndicate surreptitiously transporting drugs in a global and collaborative operation to bring them into Hong Kong: *HKSAR v Lee Ming Ho*. We have borne in mind that Hui's participation in this conspiratorial enterprise incorporated a global dimension, which involved a degree of overlap when assessing his role and culpability and the international element. Bearing in mind the starting point of 27 years and 9 months' imprisonment, we consider an enhancement of 4 years and 3 months to be appropriate for Hui's role and culpability. No adjustment is warranted when applying the totality principle, resulting in a sentence of 32 years' imprisonment. Hu had a prior conviction for conspiracy to traffic in a dangerous drug for which

he was sentenced to 4 years' imprisonment on 6 May 2013. He had served his sentence on 5 January 2016, around 2 years before he committed these offences. Hu also gave evidence for Hui at his trial. He initially sought to portray the trafficking of the drugs as involving only himself and Carlos. However, in cross-examination, he agreed that, when he pleaded guilty to the offence, he admitted committing it with Hui and Carlos and that he was cooperating with Hui to retrieve the drugs from the container. The judge, in her reasons for sentence, stated that she did not believe he had told the truth when he testified, but did not hold it against him because of the substantial sentence she was imposing on him even after a one third discount. She also stated that she did not take into account as an aggravating factor his previous conviction for trafficking in a dangerous drug, for which he had served a sentence of imprisonment very shortly before he committed the present offence. We consider that these two factors warranted evaluation as to whether an adjustment should be made to the sentence. Having a previous criminal conviction for the offence on which the convicted person is to be sentenced, particularly shortly before the event was committed, is a serious aggravating factor. Accordingly, Hu's conviction for drug trafficking should have been taken into account and appropriately reflected when applying the totality principle. Where a convicted person on his own plea gives evidence for a co-accused, a sentencing court can take into account any departure from the facts or diminution of his criminality on which he entered his guilty plea, particularly where such evidence is rejected as untruthful. By embarking on this course, the convicted person has lost some of the credit to which he would otherwise be entitled for the remorse apparently shown by his guilty plea. This is a matter for a judge to exercise his or her discretion in deciding by how much the discount should be reduced: *HKSAR v Ng Chi Wong and Ors.* However, as it transpired, Hu, in his evidence, acknowledged his involvement and, although at times unclear, Hui's involvement in the conspiracy to traffic in the drugs. In these circumstances, it did not warrant any adjustment to Hu's sentence. As Hu was involved with the same drugs in the conspiracy count, we adopt the same starting point of 27 years and 9 months' imprisonment for Count 1. He was charged with attempting to traffic the drugs together with Hui and Carlos in Hong Kong during the period from 22 to 27 August 2018. The offence was directed to dealing with the drugs in Hong Kong, and made no reference to their importation. He had the key to the warehouse where the container of drugs was stored and had care and responsibility for the drugs worth about HK\$28 million. The judge described him as a responsible and trusted member of the drug syndicate who was more than a mere courier or storekeeper, but not as senior as Hui. Taking into account his role and culpability, we consider the starting point should be increased to 28 years and 6 months' imprisonment. There is no enhancement for an international element because it was not part of the factual matrix as alleged in the offence against Hu. However, there is an enhancement for his previous conviction of conspiracy to traffic in a dangerous drug of 9 months. After a reduction of one third for his guilty plea, the sentence is 19 years and 6 months' imprisonment. Count 2 was a separate drug trafficking offence. After he had been arrested for Count 1, 775.63 grammes of cocaine were found at his home, including 78 plastic bags containing cocaine and related drug paraphernalia and equipment. As correctly described by the judge, he was the distributor and middleman of the drugs. We adopt a starting point of 17 years and 1 month's imprisonment, and taking into account his role and culpability, the appropriate notional starting point is 18 years and

6 months' imprisonment. We enhance his sentence by 9 months for his previous conviction of conspiracy to traffic in dangerous drugs. After a reduction of one third for his guilty plea, the sentence is 12 years and 10 months' imprisonment. Taking into account the totality principle, we order that 2 years and 6 months of the sentence for Count 2 run consecutively to the sentence on Count 1, resulting in a total sentence of 22 years' imprisonment. We set aside Hui's sentence of 37 years and 3 months' imprisonment and substitute it with a sentence of 32 years' imprisonment. We set aside Hu's total sentence of 25 years and 2 months' imprisonment and substitute it with a total sentence of 22 years' imprisonment.

Conclusion

For the reasons stated, we dismissed Hui's appeal against conviction. We allow Hui's and Hu's appeals against sentence, set aside their sentences and substitute them with the sentences we have stated. Postscript As we have already noted, we dismissed Hui's appeal against conviction. This occurred before the morning break. When we returned to continue to hear the sentence appeals, we were informed by Mr Chan that he had been instructed by Hui that the whole legal team no longer represented him in relation to his conviction appeal. It was noted that the conviction appeal had already been decided and he had separate legal representation for his sentence appeal. When we sought an explanation from Hui, he stated that since the end of 2023 he had been pursuing a case against the Customs officers as he had evidence to show that they made up the case against him by manipulating and fabricating evidence. He further stated that the Customs officers and Carlos, "might have" committed the offence of perverting the course of public justice. He had sent letters in relation to this matter but had not raised it at trial. He acknowledged that in the seven grounds of appeal supporting his leave application, he had not raised this matter in any of them. Of the seven grounds, the only one on which leave was granted concerned the co-conspirators' rule which we have already noted was broken up into two grounds. He further acknowledged that this was a new ground which he had not previously raised. We were not informed how this matter related to the sacking of his legal team after his conviction appeal had been decided. He first filed his notice of application for leave to appeal against conviction and sentence on 30 November 2021. He expressed his dissatisfaction with his conviction and sentence and listed a series of complaints against his conviction, which were mainly directed at the judge's handling of his case. However, he only stated that there was strong evidence that Carlos was untrustworthy, referring to the fact that Carlos had made seven statements. He also mentioned that after the trial, there was evidence that Customs officers may have been coaching Carlos. A very detailed leave judgment (23 pages) was given addressing Hui's grounds of appeal. Ground 2 complained that the judge had wrongly directed the jury on how to assess the credibility of Carlos, listing several matters that the judge failed to address concerning Carlos's truthfulness. Leave was refused on this ground as the judge had comprehensively addressed the matters relating to Carlos's previous statements in which he acknowledged in his evidence in court that he had lied to the Customs officers. Ground 2 was included in the Perfected Grounds of Appeal dated 22 May 2023 and the Amended Perfected Grounds of Appeal dated 26 July 2023. We note that since November 2021, when this matter was obliquely raised in his leave

application, it had not manifested as a ground of appeal. As would be expected, the defence case focused mainly on challenging the credibility of Carlos, which was summarised by the judge in her directions to the jury. We observe that it is for Hui to decide how he wishes to proceed with this matter and whether to seek advice from a new legal team. (Andrew Macrae) (Kevin Zervos) (Keith Yeung) Vice President Justice of Appeal Judge of the Court of First Instance CACC 269/2021 Ms Denise Chan, SADPP, of Department of Justice, for the respondent Mr Joe Chan and Mr Oscar Tam, instructed by Wai & Co, for the appellant (for conviction only) Mr Hanif Mohamed Mughal and Ms Teresa Yu, instructed by Bobby Tse & Co, assigned by the Director of Legal Aid, for the appellant (for sentence only) CACC 127/2025 Ms Denise Chan, SADPP, of Department of Justice, for the respondent The appellant appeared in person

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