IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 230

Criminal Case No 18 of 2018

Between

Public Prosecutor

And

Choo Peng Kuen

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

[Criminal Law] — [general exceptions] — [unsoundness of mind]

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Public Prosecutor
v
Choo Peng Kuen

[2018] SGHC 230

High Court — Criminal Case No 18 of 2018
Pang Khang Chau JC
27 – 29 March; 30 April, 7 May 2018; 14 August 2018

22 October 2018

Pang Khang Chau JC:

Introduction

1 The accused, Choo Peng Kuen, a 51-year-old male Singaporean faced a capital charge of possessing not less than 36.42 g of diamorphine for the purposes of trafficking, an offence under section 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). The accused claimed trial to the capital charge. Ten other charges were stood down by the Prosecution.

2 The proceeded charge ("capital charge") states:

> That you, **CHOO PENG KUEN**,
>
> on 19 February 2015 at about 2.37 a.m., in unit #04-14 of Siglap V Condominium located at No. 881 East Coast Road,

> Singapore 458278, Singapore, did traffic a Class 'A' controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, you possessed for the purpose of trafficking fifteen (15) packets and two (02) straws containing not less than 1302.09 grams of granular/powdery substance which was analysed and found to contain **not less than 36.42 grams of diamorphine,** without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) punishable under s 33(1) of the Act, and further upon your conviction under s 5(1)(a) read with s 5(2) of the Act, you may alternatively be liable to be punished under s 33B of the Act.
>
> [Emphases in original.]

3 The accused's defence relied mainly on psychiatric evidence to assert that he was suffering from mental disorders which negated his intent to possess all 36.42 g of the diamorphine, and/or which caused him to follow the command of an auditory hallucination to purchase part of the diamorphine (27.61 g) for the purpose of smoking himself to death on it.

4 After hearing extensive psychiatric evidence and considering the submissions from the learned deputy public prosecutors and defence counsel, I disbelieved the accused's defence, and convicted the accused on the capital charge. I further found that the accused was not a courier within the meaning of s 33B(3)(*a*) of the MDA. Accordingly, I sentenced the accused to suffer the death penalty as mandated by law.

5 The accused has appealed against his conviction and sentence. I now provide the reasons for my decision.

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Facts

The undisputed facts

6 The Defence accepted most of the Prosecution's evidence,[1] which was adduced largely by way of the Statement of Agreed Facts ("ASOF") pursuant to s 267 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), as well as the uncontested statements of 48 witnesses under s 264 of the CPC ("conditioned statements"). In the main, the trial focussed on the psychiatric state of the accused. However, it will be helpful to set out the key facts as established in the ASOF and the undisputed conditioned statements.

The arrest and discovery of drugs on 18 February 2015

7 On 18 February 2015, the Police were tipped off about a firearm located at the accused's apartment at the Siglap V Condominium. At or about 11:20 pm, Deputy Superintendent Burhanudeen Haji Hussainar ("DSP Burhan") spotted the accused at the basement carpark of the Siglap V Condominium.[2] DSP Burhan and Assistant Superintendent Chris Lee Tien Huat ("ASP Lee") approached the accused. He was questioned and then searched.[3]

8 The accused was carrying a black clutch bag. Inside were two stacks of $50 notes totalling $10,000, five handphones, and two packets of crystalline substance.[4] Upon further questioning, the accused admitted that the crystalline substance was "ice" (a street name for methamphetamine), which he intended

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[1] Defence's Closing Submissions ("DCS"), dated 30 April 2018, at para 2.

[2] ASOF, at paras 3-5.

[3] DSP Burhan's conditioned statement, at para 7, at Agreed Bundle, Vol. 2 ("2AB") 421.

[4] Sergeant Muhammad Helmi bin Abdul Jalal's ("Sgt Helmi") conditioned statement, at paras 6C and 7A, at 2AB 464.

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for his own consumption.[5]

9 Simultaneously, a group of officers detained the accused's friend, Lim Chin Huat Jerry ("Jerry"), along with Jerry's girlfriend, "Poo".[6] At the time of the offence, the accused was residing in a room, while Jerry resided in the other room, in the accused's two-room apartment.[7] The accused, Jerry, and "Poo" were accosted by the officers as they were leaving the apartment for dinner.[8]

10 The accused led the officers to his apartment and pointed out his bedroom, where a search was conducted. No firearm was found. However, in the course of the search, ASP Lee discovered several packets of brown granular substances in the bottom drawer of a computer table in the accused's bedroom. The search was discontinued and the Central Narcotics Bureau ("the CNB") was called in to take over the investigation.[9]

11 For ease of reference, I include a table of the following exhibits seized from the computer table, together with the corresponding analysis results from the Health Sciences Authority ("HSA"):[10]

Place found	**CNB**	**Details of exhibit**	**Gross**	**Net weight of**

5 ASP Lee's conditioned statement, at paras 7-8, at 2AB 426.

6 DSP Burhan's conditioned statement, at para 8, at 2AB 421.

7 ASOF, at para 6.

8 ASOF, at para 28.

9 ASOF, at paras 7-8.

10 ASOF, at paras 12 and 15.

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	Exhibit label		**weight**	**diamorphine**
From the top of the computer table ("C")	C2	One straw of granular/powdery substance	0.21 g	Not analysed for net weight
From the top drawer of the computer table ("D")	D1	Four packets and one straw containing a granular/powdery substance	47.93 g	1.00 g
From the bottom drawer of the computer table ("E")	E5	One packet of granular/powdery substance	231.4 g	5.59 g
	E6A	Five packets of granular/powdery substance	37.40 g	0.60 g
	E7	One packet of granular/powdery substance	67.85 g	1.62 g
	E1	One packet of granular/powdery substance	231.0 g	6.71 g
	E2	One packet of granular/powdery substance	229.1 g	6.14 g
	E3	One packet of granular/powdery substance	227.4 g	7.73 g
	E4	One packet of granular/powdery substance	229.8 g	7.03 g
Total gross weight of heroin: 1,302.09 g				

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Exhibits C2, D1, E5, E6A, and E7 comprising net weight of **8.81 g** of diamorphine were from the first shipment referred to at [18] below.
Exhibits E1, E2, E3, and E4 comprising net weight of **27.61 g** of diamorphine were from the second shipment referred to at [20] below.
Total net weight of diamorphine: **36.42 g**

12 Various other drug exhibits and paraphernalia were seized from the accused's computer table and from a dining table in the living room of the accused's apartment.[11] Many of these non-diamorphine drug exhibits formed the subject matter of the stood down charges. Seven phones belonging to the accused (including those stated at [8] above) were also seized.[12]

The accused's drug trafficking activities up to 14 February 2015

13 The accused gave various recorded statements to the Investigation Officer, Shafiq Basheer ("IO Shafiq"). These included:

(a) Cautioned statement under s 23 of the CPC, recorded on 22 February 2015, at about 5:15 pm ("the first statement");

(b) Statement under s 22 of the CPC, recorded on 23 February 2015, at about 5:57 pm ("the second statement");

(c) Statement under s 22 of the CPC, recorded on 3 March 2015, at about 9:00 pm ("the third statement");

(d) Statement under s 22 of the CPC, recorded on 4 March 2015, at about 3:38 pm ("the fourth statement");

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[11] Sgt Helmi's conditioned statement, at para 7, at 2AB 466-467.

[12] ASOF, at para 17.

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(e) Statement under 22 of the CPC, recorded on 4 March 2015, at about 9:32 pm ("the fifth statement");

(f) Statement under s 22 of the CPC, recorded on 5 March 2015, at about 9:32 pm ("the sixth statement"); and

(g) Statement under s 22 of the CPC, recorded on 5 March 2015, at about 11:34 pm ("the seventh statement").

14 The accused's statements were admitted pursuant to IO Shafiq's conditioned statement.[13] The accused agreed that the statements were recorded accurately, and not recorded under oppressive circumstances. He had given all of these statements voluntarily, without any threat, inducement, or promise.[14]

15 The accused revealed that he had been arrested on an *earlier* drug trafficking charge in May 2013 and had recently been released on bail on September 2014. Sometime in October 2014, whilst on bail, the accused relapsed into smoking heroin. He had also returned to his drug trafficking activities, as he claimed he needed money to pay for his lawyers' fees. During this time, the accused began to acquire his own clients, and dealt with various suppliers, including a Malaysian drug supplier known to him as "Billa Visu".[15]

16 The accused accepted that, as part of his drug trafficking activities, he would use weighing scales to weigh the heroin and repack them into small plastic packets. The accused moved into the Siglap V Condominium on 18 January 2015. Drug couriers from the accused's Malaysian suppliers would go directly to the Siglap V Condominium to deliver drugs to the accused.[16]

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[13] Notes of Evidence ("NE"), 27 March 2018, 57:7-12.

[14] ASOF, at para 16; NE, 27 March 2018, 88:11-14.

[15] ASOF, at paras 18-20.

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The two shipments of the 8.81 g of diamorphine and the 27.61 g of diamorphine

17 While the accused had admitted that he had previously been trafficking in drugs (see [15]-[16] above), the focus of the present case was on the period between 14 February and 18 February 2015 relating to two shipments of drugs which comprised the seized exhibits (listed in the table at [11] above).

18 The first shipment pertains to one pound of heroin and 250 g of "ice" ordered by the accused from Billa Visu sometime on 14 or 15 February 2015. The heroin was delivered to the accused in two bundles and the "ice" in one bundle the following day. The accused paid the courier $13,700 in cash.[17]

19 The accused repacked one of the two bundles of heroin, and proceeded to place the other bundle (exhibit E5) into the bottom drawer of his computer table in his bedroom. He also placed in this drawer five zip-lock packets of heroin (exhibit E6A), and an additional packet of heroin (exhibit E7). At this time, the accused also placed four packets and a straw of heroin (exhibit D1) in the top drawer, and a straw of heroin (exhibit C2) on the top of the computer table.[18] On analysis, the various heroin packets from the first shipment were found to contain a net weight of 8.81 g of diamorphine ("the 8.81 g of diamorphine").[19]

20 The second shipment pertains to two pounds of heroin which the accused

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16 ASOF, at paras 21-22.

17 ASOF, at para 23.

18 ASOF, at para 24.

19 Health Sciences Authority ("HSA") certificates under section 16 of the MDA, issued by Merula Mangudi, dated 3 June 2015, bearing Lab Nos. ID-1532-00333-009, ID-1532-00333-014, ID-1532-00333-026, ID-1532-00333-027, and ID-1532-00333-028, at Agreed Bundle, Vol. 1 ("1AB") 97-98, 103-105.

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ordered from Billa Visu on 17 February 2015.[20] Billa Visu told the accused to pass $7,400 to the courier. On 18 February 2015, after receiving a call from Billa Visu at about 10 am, the accused proceeded to the basement carpark of the Siglap V Condominium and received a white plastic bag, which he saw contained two black bundles and two transparent packets of heroin.[21]

21 As the courier had previously expressed concerns with the time it took to count small notes in public, the accused on this occasion passed the courier $7,400 in denominations of seven $1,000 notes and four $100 notes.[22]

22 Once he received the heroin, the accused proceeded to his bedroom and removed the black tape binding the two black bundles of heroin. Each wrapped bundle contained one packet of heroin. The accused placed the four packets of heroin (exhibits E1, E2, E3, and E4) in the bottom drawer of his computer table. On analysis, the four packets of heroin from the second shipment were found to contain a net weight of 27.61 g of diamorphine ("the 27.61 g of diamorphine").[23]

The elements of the charge

23 The Prosecution was required to prove beyond a reasonable doubt the following elements (see *Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR(R) 550 at [35]):

(a) Possession or custody of the controlled drug;

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20 NE, 27 March 2018, 72:26-73:9.

21 ASOF, at paras 25-26.

22 ASOF, at para 26.

23 ASOF, at para 27; HSA certificates under s 16 of the MDA, issued by Merula Mangudi, dated 3 June 2015, bearing Lab Nos. ID-1532-00333-022, ID-1532-00333-023, ID-00333-024, and ID-1532-00333-025, 1AB 99-102.

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(b) Knowledge of the nature of the controlled drug;

(c) That the possession was for the purpose of trafficking; and

(d) An absence of authorisation under the MDA.

24 There was no dispute that the accused had been in possession of all the drug exhibits listed at [11] above. It was also the accused's testimony that he knew these exhibits contained heroin.[24] He further acknowledged that he was not authorised under the MDA or its Regulations to possess or traffic in the diamorphine.[25]

The Prosecution's case

25 The Prosecution sought to persuade me that the evidence demonstrated that the accused possessed all 36.42 g of the diamorphine for the purposes of trafficking. In addition, they relied on the presumption under s 17 of the MDA.[26] In other words, it fell on the accused to prove on a balance of probabilities that he had not possessed the 36.42 g of diamorphine for the purposes of trafficking.

The Defence's case

26 The Defence ran two alternative defences, both of which were premised on the alleged mental disorders suffered by the accused at the material time. Specifically, it was asserted that the accused was suffering from Substance-Induced Depressive Disorder ("SIDD") and Substance-Induced Psychotic Disorder ("SIPD").

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24 NE, 27 March 2018, 73:1-18.

25 ASOF, at para 29.

26 Prosecution's Opening Address, dated 23 March 2018, at para 6.

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27 The first alternative defence was that the accused's mental disorders so substantially impaired his mental functions as to negate his intention to possess the entire 36.42 g of diamorphine.[27] In their closing submissions, the Defence clarified that this was a plea of unsoundness of mind, making specific reference to s 251 of the CPC.[28] This was a plea that at the time of the alleged offence, the accused was incapable of knowing the nature of his actions, or incapable of apprehending that his actions were either wrong, or contrary to the law.

28 The second alternative defence was that the accused was experiencing auditory hallucinations in February 2015, among which was a "command hallucination"[29] on 17 February 2015 which told him to "order 2 pounds of heroin. It asked [him] to get the heroin so that [he] could smoke [himself] to freedom." The accused understood this to mean he was to commit suicide by smoking the 27.61 g of diamorphine.[30] The accused was following this command hallucination when he purchased the 27.61 g of diamorphine. His purpose was *not* to traffic in the diamorphine, but *solely* to "smoke [the diamorphine] to freedom".[31] The Defence further submitted that, as the accused was suffering from SIPD and SIDD, these mental disorders sapped his ability to resist the command hallucination.[32]

The evidence relied upon by the Defence

29 The Defence submitted that:

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[27] DCS, at paras 33.b, 38.b, and 54.

[28] DCS, at paras 57-58.

[29] DCS, at para 93.

[30] The accused's third statement, at para 17, at 2AB 551.

[31] DCS, at para 86.

[32] DCS, at paras 58, 91 and 93-94.

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(a) The accused's testimony and conduct was consistent with his claim that "he was affected by the voice telling him to do certain things [and he] could not resist the command hallucination which told him to buy a large quantity of heroin and to smoke it to kill himself";[33]

(b) The observations of the accused's family members prior to the arrest and of IO Shafiq immediately after the arrest corroborated symptoms that the accused was hearing hallucinations and/or exhibiting symptoms of SIDD and SIPD; and

(c) The diagnoses of the psychiatrists should be seen as supporting a finding that the accused was experiencing command hallucinations, and suffering from SIDD and SIPD.

The accused's account of what he was hearing at the time of the alleged offence

30 The accused testified that he was a frequent user of methamphetamine, diamorphine, "ecstasy" (a street name for 3,4-Methylenedioxymethamphetamine (MDMA)) and "ganja" (a street name for cannabis).[34] The accused started hearing voices in 1999 and claimed he usually heard voices after smoking methamphetamine. The accused claimed the "voice" called himself "Ah Wah".[35]

31 Immediately after he was released on bail in September 2014 the accused was not hearing voices, nor was he on drugs.[36] However, when he was staying with his brother, Mr Calvin Choo ("Calvin"), he began drinking alcohol

33 DCS, at para 56.

34 NE, 27 March 2018, 70:17.

35 NE, 27 March 2018, 72:2-10.

36 NE, 27 March 2018, 82:3, 8-10, 14-16.

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on a daily basis. The accused was unsure, but "thought" he begun to hear voices telling him to consume drugs.[37]

32 In the fortnight prior to his arrest, the first time the accused heard the "voice" again was on 15 February 2015.[38] The accused's third statement suggests that this would have been *after* he received the first shipment of the 8.81 g of diamorphine.[39] In his testimony, the accused admitted that when he *bought* the 8.81 g of diamorphine – he did not clarify whether this was when he placed the order (on 14 or 15 February 2015) or when he received the delivery (on 15 or 16 February 2015) – he nevertheless still intended that at least part of the diamorphine would be meant for the purposes of resale.[40]

33 The accused claimed that on 15 February 2015 the "voice" told him to stop selling drugs and to renew his relationship with his brother, Calvin, and his son, Ryan Choo ("Ryan").[41] The accused agreed with the "voice",[42] and claimed he no longer wished to sell drugs after hearing the "voice".[43]

34 On 17 February 2015, the accused heard the "voice" again. It told him to buy two pounds of heroin to smoke himself to freedom. He understood this to mean he was to smoke himself to death on the two pounds of heroin. He claimed he "listen[ed] to the voice, then [he] call[ed his] supplier in Malaysia and ask[ed] for 2 pound[s]."[44] According to the accused, he "just follow[ed] the

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37 NE, 27 March 2018, 82:5-16.

38 NE, 27 March 2018, 72:13-18.

39 The accused's third statement, at paras 14-16, at 2AB 549-550.

40 NE, 27 March 2018, 91:10-22.

41 NE, 27 March 2018, 72:21-25.

42 The accused's third statement, at paras 16-17, at 2AB 550-551.

43 NE, 27 March 2018, 91:17-18.

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instruction" and it was "just like [he had] become [an] automatic man".[45]

35 On the morning of 18 February 2015, the accused collected the two pounds of heroin containing 27.61 g of diamorphine and placed it in the bottom drawer of his computer table. He then proceeded to a Chinese New Year reunion lunch ("the reunion lunch") with Calvin and Ryan.[46] When the accused returned to his apartment, he continued to smoke "ice" and heroin.[47]

36 During this time (the evening of 18 February 2015),[48] the accused heard the "voice" telling him that he "cannot make it" and he "should go and die".[49] The accused interpreted these as discouragements from the "voice" in relation to his intentions to start life afresh after he served his sentence for the pending trafficking charge (at [15] above).[50] The accused claimed he "sometime[s]" argued with the voice, but it continued to "pester" him.[51]

37 After hearing the "voice" on this third occasion, the accused claimed he intended to kill himself by consuming the two pounds of heroin. However, he was unable to do so because Jerry interrupted him with requests to go to dinner.[52] He claimed he acceded to Jerry's request to go to dinner, and decided he would kill himself after the Chinese New Year (which fell on 19 February 2015).[53]

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44 NE, 27 March 2018, 72:31-73:8.

45 NE, 27 March 2018, 117:13-19.

46 NE, 27 March 2018, 73:21-22.

47 NE, 27 March 2018, 75:14-15.

48 The accused left Calvin's house at around 5:00 pm on 18 February 2015: *see* the accused's fourth statement, at para 22, at 2AB 554.

49 NE, 27 March 2018, 75:2-11.

50 The accused's fourth statement, at paras 24-25, at 2AB 556-557.

51 NE, 27 March 2018, 75:2-6.

52 NE, 27 March 2018, 75:24-30; the accused's fourth statement, at para 25, at 2AB 557.

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38 The accused claimed that the $10,000 discovered on him when he was arrested was a "parting gift" to Calvin, which he intended to give to Calvin after the dinner with Jerry, for Calvin to invest for Ryan's benefit. He admitted that Calvin was unaware of this parting gift.[54] Nevertheless, the accused claimed that he had made such preparations as he was "thinking of dying already".[55]

39 The Defence suggested that the above (at [30]-[38]) demonstrated that the accused was "affected by the voice telling him to do certain things" and unable to resist the command hallucination which told him to purchase the two pounds of heroin, and to smoke it to kill himself.[56] From the moment he received the 27.61 g of diamorphine to his arrest, he had not deviated from his intention to commit suicide by overdosing on the diamorphine.[57]

The expert opinions of the psychiatrists, Dr Winslow and Dr Ung

40 The Defence submitted that the accused was experiencing hallucinations (specifically *command* hallucinations), and suffering from SIPD and SIDD. It would be useful to set out some of the features of these three mental conditions:

(a) A command hallucination was an auditory hallucination commanding the patient to do something;[58]

(b) Where a patient was diagnosed as genuinely experiencing auditory hallucinations, these would themselves constitute a symptom

53 NE, 27 March 2018, 75:29-30.

54 The accused's fourth statement, at para 25, at 2AB 558.

55 NE, 27 March 2018, 76:3-8, 77:7-9.

56 DCS, at paras 9.b, 9.c, and 56.

57 DCS, at para 6.e.

58 NE, 28 March 2018, 96:18-21.

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of SIPD. As a key symptom of SIPD is either delusions or hallucinations, in the absence of evidence of delusions (as in the present case), a finding that the accused was experiencing hallucinations was in fact *necessary* for a diagnosis of SIPD;[59]

(c) SIDD was also relevant because command hallucinations tended to be "mood-congruent". A patient who was depressed would hear command hallucinations telling him to kill himself;[60] and

(d) The presence of these mental disorders (both SIPD and SIDD) would affect the patient's ability to resist a command hallucination.[61]

41 The Defence relied on the diagnosis by Dr Munidasa Winslow that the accused was experiencing command hallucinations and suffering from SIDD and SIPD at the material time. Dr Winslow interviewed the accused on 17 February and 17 March 2017. He issued a first report on 19 June 2017.[62] He amended his report on 26 March 2018 ("Dr Winslow's amended report") to reflect a change in diagnosis from Major Depressive Disorder to SIDD. Dr Winslow elaborated on his diagnosis in his amended report as such:[63]

> 20 [The accused] was suffering from an abnormality of mind at the material time. Namely he was suffering from Substance-Induced Psychotic Disorder with Stimulant Use Disorder (Methamphetamine) of a severe nature, as well as Substance-

59 NE, 28 March 2018, Dr Winslow's evidence at 8:12-16; Dr Ung's evidence at 91:28-30; and Dr Gupta's evidence at 29 March 2018, 59:1-3.

60 NE, 28 March 2018, Dr Winslow's evidence at 12:23-29, 13:9-10; Dr Gupta's evidence at 29 March 2018, 17:30-32.

61 NE, 28 March 2018, Dr Winslow's evidence at 4:22-27, Dr Ung's evidence at 112:17-113:7; and Dr Gupta's evidence at 29 March 2018, 18:7-10.

62 Dr Winslow's report, dated 19 June 2017, at 2AB 707-717.

63 NE, 28 March 2018, 2:14-3:6; Dr Winslow's amended report, at paras 20-21, at Exhibit D2.

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> Induced Depressive Disorder, with Stimulant Use Disorder (Opioid) of a severe nature. He was also suffering from Cannabis Use Disorder, and Other Hallucinogen Use Disorder, both of a severe nature. [The accused's] abnormality of mind arose from the mental illnesses listed.
>
> 21 The mental illnesses listed would have substantially impaired his mental responsibility for his acts as they caused significant impairment to his cognitive, emotional, physical, and social functioning. [The accused's] ability to form rational judgment, engage in higher-level consequential thinking, and make logical decisions at the material time would have been impaired by his mental illnesses. [The accused's] ability to resist the command hallucinations (to buy a large amount of heroin in order to overdose in an attempted suicide) would have been extremely limited considering the constellation of mental conditions and the level of impairment he was [labouring] under.

42 The Defence also relied upon a diagnosis by the Prosecution's rebuttal expert witness, Dr Ung Eng Khean. Following the accused's complaint of hearing voices,[64] Dr Ung examined the accused on 26 February 2015, and would have been the first psychiatrist to do so after the accused's arrest.[65]

43 Upon IO Shafiq's request, Dr Ung issued a report on 11 April 2017 ("Dr Ung's first report") detailing his examination on 26 February 2015.[66] The Defence relied on Dr Ung's first report,[67] which stated that on 26 February 2015, he had prescribed Risperidone, an anti-psychotic medication. Dr Ung had also made a "provisional diagnosis" of an "unspecified nonorganic psychosis".[68]

44 On the stand, Dr Ung stated that assuming the accused was truthful, he would consider the accused as having heard hallucinations,[69] though he doubted

64 Dr Ung's first report, dated 11 April 2017, at para 2, at 1AB 145-6.

65 DCS, at para 45.

66 1AB 145-6-7.

67 Defence's Reply Submissions ("DRS"), dated 7 May 2018, at p 8 (at item 11).

68 Dr Ung's first report, at para 5, at 1AB 145-6.

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these were *command* hallucinations.[70]

45 At the Prosecution's request, Dr Ung wrote a report on 10 July 2017 ("Dr Ung's second report") commenting on Dr Winslow's first report (at [41] above). Dr Ung's diagnosis was that the accused's symptoms *may* have arisen secondary to SIDD or SIPD.[71]

46 The Defence also referred to the accused's psychiatric history for support. The accused's records at the Institute of Mental Health ("IMH") were extracted by the Prosecution's other rebuttal expert witness, Dr Subash Gupta, then a consultant working at the IMH. Dr Gupta assessed the accused on 20, 24, and 27 March 2015. Dr Gupta's report showed the accused had at least two prior diagnoses of drug induced psychosis:

> (a) From 24 August 1999 to 21 September 1999, the accused was admitted pursuant to a remand for theft and drug consumption charges. The accused was treated by Dr Winslow, who was with the IMH at that time. The accused was diagnosed with drug induced psychosis;[72]
>
> (b) For a day in November 1999, the accused was admitted with complaints of hearing voices. The accused was due in court the next day, presumably for a criminal matter.[73] The diagnosis on the cover page of the IMH notes for that admission was written as "? Psychosis". Dr Gupta interpreted this as suggesting that the finding "was not made with

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69 NE, 28 March 2018, 127:29-128:3.

70 NE, 28 March 2018, 105:19.

71 Dr Ung's second report, at para 19, at 1AB 145-10; NE, 28 March 2018, 105:7-15.

72 NE, 29 March 2018, 8:9, 21-24.

73 NE, 29 March 2018, 8:25-30.

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confidence" and "there was a doubt whether the diagnosis was psychosis or not". The accused was treated with Risperidone then;[74] and

(c) On 13 May 2013, the accused was admitted for assessment at the IMH after he was arrested on a drug trafficking charge. The accused's record mentioned that he complained of hearing voices when consuming "ice" and heroin. He was diagnosed with drug-induced psychosis then.[75]

Corroborative observations by Calvin, Ryan and IO Shafiq

47 The Defence relied on the testimony of the accused's brother, Calvin and the accused's son, Ryan. I pause to note that Calvin and Ryan were both interviewed on 31 March 2017 by Dr Winslow as corroborative sources.[76] Dr Gupta interviewed Calvin in March 2015.[77] Dr Ung did not interview the accused's family members, but relied on information obtained by Dr Winslow from Calvin and Ryan, which was recorded in Dr Winslow's first report.[78]

48 Calvin's testified that the accused stayed with him for several weeks after he was released on bail in September 2014. During this time, Calvin "noticed on several occasions that [the accused] would stand on the balcony at night and mumble and talk to himself."[79] Similarly, Ryan testified that after the reunion lunch, the accused "kept mumbling to himself."[80] In this regard, Dr Ung

74 NE, 29 March 2018, 8:13-17; Dr Gupta's report, dated 30 March 2015, at para 9, at 1AB 142-145-5.

75 Dr Gupta's report, at para 9, at 1AB 143; NE, 29 March 2018, 55:29-32.

76 Dr Winslow's report, at paras 1.11 and 1.12, at 2AB 709.

77 Dr Gupta's report, at para 3, at 2AB 142.

78 Dr Ung's second report, at paras 8-9, at 2AB 145-9.

79 Calvin's conditioned statement, at paras 2-3, at 2AB 705.

80 Ryan's conditioned statement, at para 4, at 2AB 706; NE, 27 March 2018, 146:8-24.

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accepted that this corroborative information "would be in keeping with some form of psychosis such as hearing voices".[81]

49 It was Calvin and Ryan's evidence that the accused displayed symptoms such as weight loss,[82] and looking frail and tired.[83] Dr Winslow stated that such symptoms may suggest the accused had poor self-care and was consonant with depressive or psychotic symptoms.[84] However, both Dr Winslow and Dr Ung accepted that the weight loss and the tiredness could be due to consumption of methamphetamine[85] and not necessarily due to the mental disorders.

50 The Defence relied on IO Shafiq's report under s 247(1) of the CPC, which was a report made when an accused was suspected to be of unsound mind.[86] IO Shafiq's report on 16 March 2015 stated that in the course of investigations, the accused had claimed to be influenced by an auditory hallucination to purchase a large quantity of heroin, and to consume the heroin for the purposes of committing suicide.[87]

The Prosecution's responses

51 To refute the Defence's case(s), the Prosecution's submissions were:

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81 NE, 28 March 2018, 122:6-9.

82 Calvin's conditioned statement, at para 7, at 2AB 705; Ryan's conditioned statement, at para 3, at 2AB 706.

83 Ryan's conditioned statement, at paras 2-3, at 2AB 706.

84 NE, 28 March 2018, 67:23-24, 81:24-82:2.

85 Dr Winslow's evidence at NE, 28 March 2018, 8:27-31, 67:17-19; and Dr Ung's evidence at NE, 28 March 2018, 119:11-31.

86 DCS, at para 11(d).

87 Annex A, at Exhibit D4.

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(a) The accused's evidence on the command hallucinations was both internally and externally inconsistent and should not be believed;

(b) Calvin, Ryan, and IO Shafiq's evidence did not support the accused's claim of hearing voices, or a diagnosis of mental disorders;

(c) The accused's account of the voices did not lead to a diagnosis of hallucinations.[88] Even if he was hearing hallucinations, these were not of clinical significance, nor were they *command* hallucinations;[89]

(d) Even if the accused was hearing voices, he would not qualify under the other diagnostic criteria for a finding of SIPD or SIDD;[90] and

(e) Dr Gupta's assessment and diagnosis of the accused did not have the limitations as Dr Winslow and Dr Ung's approaches did. Dr Gupta's diagnosis that the accused did not experience hallucinations and was not suffering from SIDD or SIPD should be preferred over Dr Winslow and Dr Ung's diagnoses.

Issues for determination

52 The following issues arose for determination:

(a) Was the accused experiencing hallucinations?

(b) Was the accused suffering from mental disorders such as SIPD or SIDD?

(c) Was the accused of unsound mind?

88 Prosecution's Closing Submissions ("PCS), dated 30 April 2018, at paras 76-77.

89 PCS, at paras 91-92.

90 PCS, at paras 12 and 74.

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(d) Was the accused labouring under command hallucinations at the material time?

(e) Assuming that the accused was subject to a command hallucination, was his possession of the 27.61 g of diamorphine in compliance with the alleged command hallucination?

(f) Whether the accused was eligible for the alternative sentencing regime under s 33B(2) of the MDA?

My findings

53 It would be useful for me to determine whether the accused was suffering from any mental disorders before considering the accused's substantive defences. The existence of SIDD and/or SIPD would determine if there was any basis for the first alternative defence of unsoundness of mind. It would also form the relevant background for evaluating the second alternative defence that the accused had purchased and possessed the 27.61 g of diamorphine because he was doing so in compliance with a command hallucination.

54 Apart from the diagnoses, the existence of such mental disorders may also inform the court as to the veracity of the accused's factual assertions as to whether he was hearing "voices" and whether his ability to resist acting on the instructions of these "voices" was affected.

55 Further, as the presence of hallucinations is a key symptom of SIPD, I will first consider the evidence concerning the accused's claim to have experienced hallucinations before turning to consider the remaining evidence concerning whether the accused was suffering from SIPD and/or SIDD.

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The accused was probably hearing voices, but these did not amount to hallucinations

The accused was more likely than not hearing voices

(1) No adverse inference for failure to mention voices in first statement

56 I was prepared to accept that it was probable that the accused did hear a "voice" in his head from time to time. In this regard, the Prosecution had suggested that the accused's failure to mention that he was hearing voices in his first statement on 22 February 2015 meant that any account of "voices" that appeared in his later recorded statements were afterthoughts.[91] While I accepted that the accused's first statement did not strictly mention "voices", I note that the cautioned statement nevertheless included such details as the accused claiming that the drugs were "meant for [his] own consumption because [he had] a tendency of committing suicide through those drugs" and that he was "suffering from schizophrenia".[92]

57 On balance, I did not think it necessary to draw an adverse inference. Although the first statement left out a specific detail, it was not quite a complete omission: see *Public Prosecutor v Saridewi bte Djamani and another* [2018] SGHC 204 at [60]. I gave the accused the benefit of the doubt that certain aspects of his defence was somewhat encapsulated in the allegations of "committing suicide" and "schizophrenia": see *Yap Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855 at [38].

58 In any event, there was some degree of contemporaneity as the accused

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91 PCS, at para 16.

92 The accused's first statement, at 2AB 539.

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did complain about hearing voices soon after his first statement was recorded. I note that Investigation Officer Ranjeet Ram Behari's letter to the Prisons Complex Medical Centre on 25 February 2015 stated that the accused "claimed that he was hearing voices and claims not to be mentally stable as he has not been consuming his psychiatric medications for the past few months prior to his arrest."[93]

(2) The testimony of the accused's family members was corroborative

59 I was also prepared to accept Calvin and Ryan's testimony that the accused was seen at times mumbling to himself. While I take the Prosecution's point that Calvin did not tell Dr Gupta this detail,[94] Calvin was nevertheless candid in testifying that he did not observe the accused muttering to himself during the reunion lunch.[95] That said, Calvin's observation that the accused was muttering to himself was made in September 2014 and thus may be of limited relevance to an evaluation of what the accused's condition was in February 2015 (the time of the alleged offence).[96]

60 In this regard, I found Ryan's evidence more relevant. Although the Prosecution pointed out that Dr Winslow and Dr Gupta had stated that a person talking to himself could simply be that, and nothing more,[97] Ryan had stated:[98]

> "Q: Okay. So you don't know what he's saying under his breath?

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93 Exhibit D7.

94 PCS, at para 36.

95 NE, 27 March 2018, 136:17-18.

96 PCS, at para 36.

97 NE, 28 March 2018, Dr Winslow's evidence at 62:13-16, Dr Gupta's evidence at 29 March 2018, 79:26-28.

98 NE, 27 March 2018, 148:18-23.

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> A: No, no, no.
>
> Q: He could well be just talking to himself or verbalising his thoughts, right? You wouldn't know?
>
> A: I don't---I wouldn't say that he's collecting his thoughts as he---he seemed really high at that point. So, I'm not so sure he was thinking about anything."

61 Admittedly, Ryan's testimony was not conclusive. While he testified that the accused looked too high to be able to think, he also failed to directly answer the Prosecution's question on whether the accused was merely simply taking to himself. On balance, given Calvin's and Ryan's observations, I was not prepared to conclude that the accused's account of hearing "voices" was a complete fabrication.

The voices the accused was hearing would not amount to hallucinations

62 Even though I accepted the accused could have been hearing voices, this did not necessarily mean his symptoms met a diagnosis of hallucinations at the material time. The following psychiatric evidence was relevant:

(a) The Prosecution relied on the opinion of Dr Gupta, who testified that the accused was not experiencing hallucinations. In his view, the "voices" the accused was hearing might only amount to "mental imagery" (*ie*, the accused's inner thoughts).[99]

(b) Conversely, Dr Winslow was of the opinion that the accused was experiencing hallucinations, and in his report and testimony specifically identified these as *command* hallucinations.[100]

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99 NE, 29 March 2018, 16:1-14.

100 NE, 28 March 2018, 58:4, 13-21, 60:1-4, 17-22; Dr Winslow's amended report, at para 21, at Exhibit D2.

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(c) Dr Ung stated that if the accused perceived the voice as coming from his internal space or had some awareness that the voice was imaginary, then these would technically be "pseudo-hallucinations" rather than "true hallucinations".[101] Dr Ung opined that "pseudo-hallucinations [were] still a significant symptom to point…towards some form of mental disorder."[102] For completeness, Dr Gupta disagreed on this front. His view was that "pseudo-hallucinations" were not hallucinations.[103]

63 I was faced with conflicting psychiatric opinions. In approaching such evidence, the principles articulated by V K Rajah JA in *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [76] were pertinent:

> …Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts. An expert's opinion "should not fly in the face of proven extrinsic facts relevant to the matter" *per* Yong Pung How CJ in *Khoo James v Gunapathy d/o Muniandy* [2002] 2 SLR(R) 414 at [65]…Content credibility, evidence of partiality, coherence and a need to analyse the evidence in the context of established facts remain vital considerations…

64 Simply put, the court should scrutinise an expert's methodology and the objective facts they had based their opinion upon: see *Singapore Finance Ltd v Lim Kah Ngam (S'pore) Pte Ltd (Eugene HL Chan Associates, third party)* [1983-1984] SLR(R) 403 at [33].

65 Although the experts had arrived at different conclusions, there was largely common ground on what a diagnosis of hallucinations should contain:

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101 NE, 28 March 2018, 120:13-19.

102 NE, 28 March 2018, 121-10-11.

103 NE, 29 March 2018, 59:30-32

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(a) According to Dr Gupta, hallucinations were false sensory perceptions and would be perceived as being located in the objective space (*ie*, a voice that was heard as coming from *outside* of one's head). Hallucinations were not subject to conscious manipulation, and could not be readily controlled or easily dismissed. Significant to a diagnosis would be whether the patient lacked insight into the imaginary nature of the voice, and how much control the patient had over the voice.[104] Any one criterion would not in itself lead to a diagnosis for or against hallucinations, but a combination of the criteria had to be considered;[105]

(b) Dr Winslow agreed that psychiatrists would "usually try to differentiate voices in the objective space" as opposed to the subjective space (*ie*, a voice that was heard *inside* of one's head).[106] However, he did not fully engage with this distinction. Instead, he stated that what was important was what the patient believed about the voice, whether they took it seriously, and whether they could ignore it at any time;[107] and

(c) Dr Ung concurred that a "true" auditory hallucination would be a voice which was perceived by the patient as coming from the objective space *and* in respect of which the patient had no insight that the voice was imaginary. If a patient perceived the voice in his internal space *or* he had insight that the voice may not be real, then he would be diagnosed with "pseudo-hallucinations".[108]

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[104] NE, 29 March 2018, 13:22-28, 14:2-18, 16:22-25.

[105] NE, 29 March 2018, 16:19-22.

[106] NE, 28 March 2018, 19:8-11.

[107] NE, 28 March 2018, 19:28-32.

[108] NE, 28 March 2018, 120:10-26.

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66 It was clear from the totality of the psychiatric evidence that two relevant features in diagnosing a hallucination would be whether a patient perceived the voices in the objective or subjective space, and whether a patient had insight that the voices were imaginary.

67 In the present case, I was of the view that even if the accused was hearing voices at the material time, the voices would have been perceived in the subjective space. I was also of the view that the accused had insight into the nature of the voices. Hence, proceeding along the common ground outlined above, I found that there was insufficient basis to support a diagnosis of hallucinations.

(1) Any voices heard by the accused was perceived in the subjective space

68 I find it significant that the accused consistently maintained in his recorded statements to IO Shafiq (in March 2015) that the voice was from "inside" his head.[109] When examined by Dr Gupta (in March 2015), the accused also told him that the voice was heard in the subjective space.[110]

69 It seemed to me that the first time the accused had mentioned the voice as being heard from outside his head was only two years later, to Dr Winslow (in February and March 2017).[111] Given these inconsistencies, I accepted the Prosecution's submission that the accused was tailoring his account of the "voice" to adopt features that would make it seem as though he had been experiencing hallucinations.[112]

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109 NE, 27 March 2018, 88:18-23, 99:12-15.

110 NE, 27 March 2018, 86:21-87:5.

111 NE, 28 March 2018, 53:3-16.

112 PCS, at para 23.

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70 I should mention that Dr Ung had testified that: [113]

> Q: …So are you able to tell that when [the accused] told you that he's hearing voices, that it's pseudo-hallucination or it's real hallucination?
>
> A: From---from the way he describe it to me at that time, it sounded like a true hallucination. He was hearing it from external space of, you know, somebody---a voice speaking to him.

71 However, an examination of the documentary evidence does not reveal that the accused had told Dr Ung that he was hearing the voice from the "external space". Dr Ung's clinical notes of the only occasion he examined the accused (on 26 February 2015) simply recorded that the accused "[complained of] male voice – one voice – abusing me – 'people harm me and back stab me'".[114]

72 In his first report issued on 11 April 2017, Dr Ung recounted exactly the same details as he had recorded during the examination on 26 February 2015. His second report issued on 10 July 2017 did not contain any further details about what the accused had told him about the "voice" during the examination. It would therefore appear that Dr Ung was not actually told by the accused that he had heard the voice in the objective space. Instead, what I gathered from Dr Ung's testimony (at [70] above) was simply that he had formed the *impression* that the accused was hearing the voice from the "external space" because the accused had reported that "somebody---a voice" was speaking to him.

73 This was confirmed by the accused's repeated concessions on the stand. Under cross-examination, he admitted there was no inaccuracy in the recorded statements by IO Shafiq, or in the assessment by Dr Gupta, and that he had in

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113 NE, 28 March 2018, 127:23-28.

114 Exhibit D7; NE, 28 March 2018, 91:24-26.

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fact told them he had heard the voice inside his head.[115]

74 I also found the accused's explanation for why he had told IO Shafiq and Dr Gupta that he heard the voice from inside his head revealing:[116]

> Q: So how is it that Dr Gupta end up recording from you that you said that the voices are from inside your head?
>
> A: Because I told him that the voices I heard inside---inside my head. But actually it's from outside. I never tell him it's from outside. I just told him that it's inside my head.
>
> …
>
> A: Just like we are talking, okay.
>
> Q: Yes.
>
> A: *You tell me something, I listen from you outside. But it comes to my mind to think of what you're talking. It's inside my head.*
>
> …
>
> Q: Okay. And did you tell him that you---did you tell him that those voices are actually your thoughts that time?
>
> A: No.
>
> Q: So you are saying that Dr Gupta put these things in even though you didn't tell him that?
>
> A: *Maybe I describe the voice like thoughts, but it's not my thoughts.*
>
> [Emphases added.]

75 The accused's explanation for why he told Dr Gupta that he heard the "voice" in the subjective space was that anything he heard in the objective space would have to be mentally processed by him, and this mental processing would turn the things he had heard in the objective space into thoughts inside his head. This explanation was disingenuous. If we went along with the logic of this

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115 NE, 27 March 2018, 87:1-5.

116 NE, 27 March 2018, 87:1-12, 89:13-18.

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explanation, every conversation which the accused had with a real person should also be described by him as voices in his head.

(2) The accused possessed insight into the nature of the voices

76 Dr Gupta confirmed that his detailed discussions with the accused showed that, most of the time, the accused retained insight that the "voices" were not real phenomena.[117] This meant that, irrespective of whether the accused was hearing voices in the subjective or objective space, the accused was at best only experiencing "pseudo-hallucinations".

77 In the round, I accepted Dr Gupta's assessment that two of the most important factors in deciding whether or not someone was experiencing a hallucination had not been met. [118]

(3) Limitations in Dr Winslow and Dr Ung's approaches

78 The methodology of the experts was an additional factor that I had considered in my findings on the existence of hallucinations. In essence, the accuracy of any diagnosis depended upon the truthfulness of the accused's account of his symptoms.[119] The experts were in agreement that where there may be inconsistency, it was necessary to look to alternative sources of information and to ask detailed questions to elicit a fuller picture of the patient's symptoms.[120]

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[117] NE, 29 March 2018, 16:22-17:5.

[118] NE, 29 March 2018, 68:6-12.

[119] NE, 28 March 2018, Dr Winslow's evidence at 43:30-32, and Dr Ung's evidence at 105:1-3.

[120] NE, 28 March 2018, Dr Winslow's evidence at 44:3-20, and Dr Gupta's evidence at 29 March 2018, 13:31-14:4.

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79 In my view, Dr Winslow had not adequately verified the accused's account of his symptoms. For example, despite having access to Dr Gupta's observation that the voice was perceived *subjectively*, Dr Winslow did not question the accused when he was told that the voice was perceived *objectively*.[121] Dr Winslow also did not elicit further details about whether the accused thought the voices were imaginary or real,[122] or about the accused's inconsistent accounts about whether he had control over the "voice".[123]

80 I did not think this was a sufficiently rigorous assessment. This was especially since Dr Winslow acknowledged that these inconsistent symptoms were relevant to a diagnosis of hallucinations.[124] I was not persuaded by Dr Winslow's explanation that it was not realistic to expect drug addicts to provide consistent or truthful answers all the time.[125] I would have expected that given the relevance of the symptoms, it would have been all the more necessary for Dr Winslow to ascertain which symptoms the accused was actually evincing in order to arrive at an accurate diagnosis.

81 Dr Ung examined the accused as a treating prison psychiatrist. As Dr Ung explained on the stand, his role at the time was to treat the patient and not to conduct a forensic assessment. Thus, even though there were no objective symptoms, he went ahead and prescribed Risperidone, an anti-psychotic drug, to the accused solely on the strength of the accused's subjective complaint. As a treating psychiatrist, he would give the patient the benefit of the doubt as there

121 NE, 28 March 2018, 47:8-10, 54:2-6.

122 NE, 28 March 2018, 46:24-27.

123 NE, 28 March 2018, 57:2-32.

124 NE, 28 March 2018, on insight at 47:17-19, on subjective space at 50:3-11, on control at 57:25-32.

125 NE, 28 March 2018, 58:6-12.

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was a greater danger of not treating an actual psychosis than to have given anti-psychotic drugs to someone who had no psychosis.[126] In my view, any diagnosis or assessment made in such circumstances would naturally carry less weight than a diagnosis made after a forensic assessment of the type carried out by Dr Gupta.

82 As for Dr Ung's second report, he depended on both his initial assessment and the veracity of the facts as related to Dr Winslow.[127] Any mendacity on the part of the accused to Dr Winslow would similarly have affected the validity of Dr Ung's diagnosis. In any event, I had doubts regarding the accused's internally inconsistent (at [68]-[69] above) and externally inconsistent (at [131]-[140] below) accounts.

83 In contrast, Dr Gupta's assessment started with open-ended, general questions, which were progressively narrowed down to clarify any missing information.[128] In doing so, Dr Gupta managed to elicit further details about the accused's symptoms where necessary.[129] In my view, such an approach was more helpful in presenting a more complete and careful picture to the court of the bases upon which a psychiatrist had arrived at his diagnoses.

84 I also note that given that Dr Winslow had assessed the accused only two years after the offence, his assessment was relatively disadvantaged.[130] This was a factor outside of Dr Winslow's control, but nevertheless the passage of time may mean that a patient's memory would no longer be accurate.[131]

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[126] NE, 28 March 2018, 92:3-31.

[127] NE, 28 March 2018, 94:24-30.

[128] NE, 29 March 2018, 64:15-20.

[129] NE, 29 March 2018, 81:3-7.

[130] PCS, at para 56.

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The accused was not suffering from SIPD or SIDD at the material time

85 I preface my observations by stating that the Diagnostic and Statistical Manual of Mental Disorders' (American Psychiatric Press, 5th Ed, 2013) ("DSM-V") criteria for diagnosing SIDD and SIPD was a common basis adopted during the trial.[132] The psychiatrists had either assessed the accused,[133] or given their expert opinion on the stand with reference to these criteria.[134]

86 Under the DSM-V, the following criteria had to be cumulatively met for a diagnosis of SIPD:

> A. Presence of one or both of the following symptoms:
>
> 1. Delusions.
> 2. Hallucinations.
>
> B. There is evidence from the history, physical examination, or laboratory findings of both (1) and (2):
>
> 1. The symptoms in Criterion A developed soon or after substance intoxication or withdrawal or exposure to a medication.
> 2. The involved substance/medication is capable of producing the symptoms in Criterion A.
>
> C. The disturbance is not better explained by a psychotic disorder that is not substance/medication-induced. Such evidence of an independent psychotic disorder could include the following:
>
> The symptoms preceded the onset of the substance/medication use; the symptoms persist for a substantial period of time (e.g., about 1 month) after the cessation of acute withdrawal or severe intoxication; or there is other evidence suggesting the existence of an independent non-

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131 NE, 29 March 2018, 22:13-16.

132 PCS, at para 71.

133 Dr Winslow's evidence, at NE, 28 March 2018, 45:1-4, 82:12-20.

134 Dr Gupta's evidence, at NE, 29 March 2018, 17:9-13, 19:19-20:7, 35:7-10.

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substance/medication-induced psychotic disorder (e.g., a history of recurrent non-substance/medication-related episodes).

D. The disturbance does not occur exclusively during the course of a delirium.

E. The disturbance causes clinically significantly distress or impairment in social, occupational, or other important areas of functioning.

Note: This diagnosis should be made instead of a diagnosis of substance intoxication or substance withdrawal only when the symptoms in Criterion A predominate in the clinical picture and when they are sufficiently severe to warrant clinical attention.

87 Under the DSM-V, the following cumulative criteria had to be met for a diagnosis of SIDD:

A. A prominent and persistent disturbance in mood that predominates in the clinical picture and is characterized by depressed mood or markedly diminished interest or pleasure in all, or almost all, activities.

B. There is evidence from the history, physical examination, or laboratory findings of both (1) and (2):

1. The symptoms in Criterion A developed soon or after substance intoxication or withdrawal or exposure to a medication.

2. The involved substance/medication is capable of producing the symptoms in Criterion A.

C. The disturbance is not better explained by a depressive disorder that is not substance/medication-induced. Such evidence of an independent depressive disorder could include the following:

The symptoms preceded the onset of the substance/medication use; the symptoms persist for a substantial period of time (e.g. about 1 month) after the cessation of acute withdrawal or severe intoxication; or there is other evidence suggesting the existence of an independent non-substance/medication-induced depressive disorder (e.g., a history of recurrent non-substance/medication-related episodes).

D. The disturbance does not occur exclusively during the course of a delirium.

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> E. The disturbance causes clinically significantly distress or impairment in social, occupational, or other important areas of functioning.
>
> Note: This diagnosis should be made instead of a diagnosis of substance intoxication or substance withdrawal only when the symptoms in Criterion A predominate in the clinical picture and when they are sufficiently severe to warrant clinical attention.

88 I was faced with conflicting psychiatric opinions on SIPD and SIDD:

(a) Dr Winslow diagnosed the accused with SIPD and SIDD;

(b) Dr Ung was less categorical, but nevertheless thought it "probably more likely than not" that the accused suffered from both mental disorders[135] and

(c) Dr Gupta considered that the accused did not suffer from either SIPD or SIDD.[136]

Limited relevance of the accused's psychiatric history

89 I start by addressing the Prosecution's submission that the accused's psychiatric history was a "red herring".[137] It was also pointed out that the accused's prior admissions to the IMH were when he had been brought there by the Police or the CNB. Dr Gupta suggested the accused may have been "reporting symptoms for a possible advantage [of] mitigation."[138]

90 I did not think the accused's psychiatric history was completely irrelevant. Information about a patient's psychiatric profile and make-up might

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135 NE, 28 March 2018, 105:13-15.

136 NE, 29 March 2018, 35:2-4.

137 PCS, at p 31.

138 PCS, at paras 38-39; NE, 29 March, 9:1-6.

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give some indication as to a patient's propensity and susceptibility to mental conditions, and I agreed with Dr Ung that this might particularly be the case for recurrent conditions.[139] There was also some force in Dr Winslow's view that consistent diagnoses by qualified psychiatrists would be corroborative of each other.[140]

91 Equally, Dr Gupta's point was that a prior diagnosis was corroborative only if there was sufficient information regarding how that particular diagnosis had been reached.[141] In the present case, there was insufficient information in the accused's psychiatric history (at [46] above), to ascertain how those diagnoses were reached. In this regard, I agreed that the probative weight of the accused's prior diagnoses had to be balanced against this lack of information.

92 In any case, the fundamental question to be determined remained whether the accused was suffering a mental disorder *at the material time*, which would depend on the presentation of his symptoms during this time.[142] It is to these symptoms that I now turn.

The accused's symptoms did not meet "Criterion A" for a diagnosis of SIPD under the DSM-V

93 All three psychiatrists were in agreement that, in the absence of evidence of delusions, a diagnosis of hallucinations was necessary to fulfil "Criterion A" for a diagnosis of SIPD.[143] It follows from my acceptance of Dr Gupta's view at

139 Dr Ung's second report, at para 20, at 1AB 145-11; NE, 28 March 2018, 95:18-25.

140 NE, 28 March 2018, 30:10-13.

141 NE, 29 March 2018, 56:27-57:4.

142 PCS, at para 73(b); NE, 29 March 2018, 58:14-17.

143 NE, 28 March 2018, Dr Winslow's evidence at 61:19-22, Dr Ung's evidence at 123:13-14, Dr Gupta's evidence at 29 March 2018, 59:1-4.

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[77] above that I should also find that the accused had not met this criterion.

94 I note Dr Ung was of the contrary view that "pseudo-hallucinations" were significant symptoms to point toward "some form of [a] mental disorder"[144] and a symptom of SIPD.[145] For completeness, I accepted Dr Gupta's view that "pseudo-hallucinations" did not contribute much by way of diagnostic significance.[146]

95 I should add that the Prosecution alluded to Dr Gupta's testimony that SIPD would typically resolve at least partially within one month and fully within six months.[147] This is inconsistent with the accused's claim that when he was in remand for a prior drug trafficking charge for more than a year from May 2013 to September 2014, he was still hearing voices.[148] Since the accused should have no access to drugs while in remand, he should not still be experiencing drug-induced hallucinations.[149] I also note that Dr Ung had also suggested that it was common in SIPD that upon cessation of methamphetamine consumption, the symptoms would subside within the first two weeks.[150]

96 The accused had also told Dr Gupta that the more methamphetamine he smoked, the softer the voices became.[151] Even Dr Winslow opined that this was not logical, as the more methamphetamine one smoked, the more symptoms

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144 NE, 28 March 2018, 120:28-32, 121:10-11.

145 NE, 28 March 2018, 128:7-9.

146 NE, 29 March 2018, 83:24-28.

147 Exhibit P261, NE, 29 March 2018, 21:1-5.

148 NE, 27 March 2018, 80:30-81:9.

149 PCS, at para 78(a); NE, 29 March 2018, 21:6-14.

150 NE, 28 March 2018, 94:11-16.

151 NE, 29 March 2018, 15:18-19.

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they should display.[152]

97 In my view, the discrepancies highlighted in the preceding two paragraphs made the accused's account of his symptoms less believable, thus further weakening the factual basis for a diagnosis of SIPD.

The accused's symptoms were equivocal with regard to "Criterion E" for a diagnosis of both SIPD or SIDD under the DSM-V

98 Under the DSM-V, a diagnosis of SIDD or SIPD required a patient to fulfil "Criterion E":

> E. The disturbance causes clinically significant distress *or* impairment in social, occupational, or other important areas of functioning.
>
> [Emphasis added.]

There are two limbs to Criterion E – "clinically significant distress" or "clinically significant impairment". Fulfilment of either limb would be sufficient to fulfil Criterion E.

99 It was the Prosecution's case that the accused's phone records (tabulated at [133]-[139] below) demonstrated an ability to function from 15 to 18 February 2015. Among other things, the accused sent voluminous messages and calls, did mathematical calculations, and made appointments with various people.[153] There was no evidence of impairment of cognitive, emotional, physical, or social functioning.[154]

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152 PCS, at para 79; NE, 28 March 2018, 18:16-20.

153 PCS, at para 99.

154 PCS, at paras 100-104.

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100 The Prosecution further submitted that the accused did not appear to show clinically significant distress. Dr Gupta's evidence was that any sleep and appetite changes were related to drug use. Dr Gupta agreed that around the material time, the accused's numerous calls to his clients and supplier, the arrangements to meet Calvin and Ryan for the reunion lunch, his concealment of his address from Calvin after the reunion lunch to prevent Calvin from knowing he was back to selling drugs,[155] and the content of the accused's messages – to a female friend – did not suggest that he had depressive symptoms that would warrant a diagnosis of SIDD.[156]

101 I agreed with the Prosecution that the accused's phone messages and other social activities showed mental acuity rather than impairment in any areas of functioning. In particular, Dr Ung and Dr Winslow were asked to examine the accused's phone messages, his ability to perform mathematical calculations to his drug client, and the fact that he had the presence of mind to ask the client to delete the message thereafter.[157] Dr Ung agreed some of these activities would go against the finding that he was severely impaired.[158] Dr Winslow initially insisted that the accused was cognitively impaired, but later conceded that given the evidence of the accused's activities, it was "possible" that even if he was hearing voices it was not to the extent of "significant impairment" as Dr Winslow had initially diagnosed.[159]

102 On the other hand, it seemed that the evidence was more equivocal on

155 NE, 27 March 2018, 95:5-19; 29 March 2018, 19:4-18.

156 PCS, at paras 99-105; NE, 29 March 2018, 21:24-22:2.

157 NE, 27 March 2018, the accused's evidence on his drug client, at 105:10-24; 28 March 2018, Dr Winslow's evidence, at 64:12-67:12; Dr Ung's evidence, at 101:24-103:14.

158 NE, 28 March 2018, 103:31-32.

159 NE, 28 March 2018, 65:31; 69:3-14.

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whether the accused was significantly distressed. I did not think the accused's messages to his female friend thanking her for "wanting to be [his] caring friend" and that he was feeling "so lucky and happy because of [her]" necessarily showed that he was not distressed.[160] The accused's message – which was contextually a reply to her message about his well-being and need for social company – did not unequivocally suggest that he was *actually* "feeling good and was happy".[161] Dr Ung was also "neutral" about whether the accused was distressed.[162] Nevertheless, while the Prosecution had not shown the accused was in a positive mood, the burden remained on the Defence to demonstrate that the accused was significantly distressed, which was not apparent on the evidence.

103 Given my finding that there was no significant impairment of the accused's social, occupational or other important areas of functioning and given my view that the evidence was equivocal as to whether the accused was significantly distressed, it is my conclusion that the Defence has failed to prove on the balance of probabilities that "Criterion E" was fulfilled. For completeness, I should add that, even if I were to give the accused the benefit of the doubt on "Criterion E", his overall symptoms would still not have satisfied the criteria for SIPD or SIDD as the accused's symptoms did not fulfil Criterion A for SIPD and the Note for SIPD and SIDD (see below).

The accused's symptoms did not fulfil the "Note" for a diagnosis of SIPD or SIDD under the DSM-V

104 The Prosecution relied on Dr Gupta's opinion that under the "Note" to

160 Exhibit E, at serial nos. 68, 173, 181 and 182.

161 PCS, at para 105.

162 NE, 28 March 2018, 99:9-13, 100:15-22.

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the DSM-V, any hallucinations or depressive symptoms ("Criterion A" for both SIPD or SIDD) had to "predominate in the clinical picture *and* [had to be] sufficiently severe to warrant clinical attention" (*emphasis added*) apart from any drug dependence, drug intoxication, or drug withdrawal.[163]

105 Dr Gupta opined that even if the voices experienced by the accused were indeed hallucinations, they did not predominate the clinical picture. Instead, it was the accused's heavy drug use and dependence that did.[164] Similarly, the accused did not display any depressive symptoms that would not already be covered by a separate diagnosis of drug use, intoxication, or withdrawal.[165]

106 The Prosecution also submitted that Dr Winslow's approach should be faulted for failing to apply the "Note" to SIPD and SIDD.[166] The Prosecution contended that if Dr Winslow had applied the "Note", he would have similarly concluded that the accused only suffered – if at all – from substance withdrawal or intoxication instead of SIPD.[167]

107 I accepted Dr Gupta's evidence that an application of the "Note" was necessary for a diagnosis of SIDD or SIPD to be arrived at, and further that the accused's clinical picture was not predominated by hallucinations or depressive symptoms, but by his heavy drug use. In reaching this conclusion, I note that Dr Winslow accepted that he had not directed his mind to the "Note" when he was assessing the accused.[168]

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163 PCS, at para 109, NE, 29 March 2018, 20:8-12.

164 NE, 29 March 2018, 20:13-25.

165 NE, 29 March 2018, 21:19-23, 22:3-5.

166 PCS, at paras 108, 111, and 112.

167 PCS, at para 111.

168 NE, 28 March 2018, 70:20-24.

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108 Moreover, when Dr Winslow's attention was drawn to the "Note", he candidly and rightly conceded that his initial diagnosis of SIDD was a "plus-minus" and he would have to "rethink and try [to] get more symptoms". This was because "the speed at which the symptoms dissipated" when he stopped his drug use made Dr Winslow "hesitate on that [diagnosis]".[169] It seemed to me that Dr Winslow's evidence confirmed that an application of the "Note" was necessary, and that the evidential basis for a finding of SIDD would be shaky if it is arrived at without applying the "Note".

109 While Dr Winslow generally appeared to maintain his diagnosis, particularly in relation to SIPD,[170] he nevertheless agreed that the accused's clinical picture was not predominated by hallucinations or his depressed mood, but was actually predominated by his heavy drug use.[171] In the light of Dr Winslow's concession, I am of the view that a finding of SIPD is not sustainable.

There was no evidential or legal basis for the defence of unsoundness of mind

Absence of psychiatric evidence to support a plea of unsoundness of mind

110 Given my findings that the accused was not suffering from SIDD or SIPD, there were no relevant mental disorders to support a finding of unsoundness of mind. While the foregoing would be sufficient to dispose of the plea of unsoundness of mind, I would add that the psychiatric evidence even taken at its highest, could not sustain a finding of unsoundness of mind. Dr Gupta was categorical in his assessment that the accused was not of unsound mind.[172] Dr Ung stated that he was "not making any finding of whether [the

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169 NE, 28 March 2018, 83:4-7, 17-19, 84:11-12.

170 NE, 28 March 2018, 84:19-22.

171 NE, 28 March 2018, 78:15-21.

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accused] was of unsound mind or not."[173] Dr Winslow's report also did not diagnose the accused with unsoundness of mind. At most, Dr Winslow's opinion was that the accused was suffering from an "abnormality of mind" arising from SIDD and SIPD, and these would have "substantially impaired [the accused's] mental responsibility for his acts…"[174] In my view, Dr Winslow's diagnosis was utilising the language of diminished responsibility going towards the sentencing discretion under s 33B(3)(*b*) of the MDA. There was therefore no psychiatric evidence before me that could lead to a conclusion of unsoundness of mind.

Conflation of the legal standard for a plea of unsoundness of mind

111 Insofar as the Defence sought to persuade me that the test for abnormality of the mind should be applied to assess unsoundness of the mind, this appeared to be a conflation of the standards required under the two tests. The Defence referred to the decision in *Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10, which at [57] cited *Phua Han Chuan Jeffery v Public Prosecutor* [2016] 3 SLR 706 ("*Jeffery Phua*").

112 However, *Jeffery Phua* (at [16]) stood for the opposite proposition that the Defence submitted for:

> I now return to the area in which it is easy to get entangled in semantics, and I hope to avoid the snare even as I am compelled to consider the question of whether the applicant's mental illness and ketamine addiction had substantially "impaired his mental responsibility" for his act of illegally importing controlled drugs. Mental responsibility is a broader concept than the mental element such as knowledge or intention required to

172 Dr Gupta's report, at para 20, at 1AB 145.

173 NE, 28 March 2018, 121:18-23.

174 Dr Winslow's report, at paras 20-21, at 2AB 714-715.

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> constitute the offence. Section 33B(3)(*b*) is intended to cover a diverse range of circumstances. *It is not intended to create a cascade of new legal categories. Section 33B(3)(b) does not require an inquiry into the applicant's moral cognisance in this case, but it is probably wide enough to apply to cases in which abnormality of mind leads the offender to be incapable of distinguishing right from wrong,* but this is not such a case…
>
> [Emphasis added.]

113 As the above makes clear, Choo Han Teck J in *Jeffery Phua* was concerned with delineating principles applicable *only* to abnormality of the mind within the meaning of s 33B(3)(*b*) of the MDA. I accept, as Choo J had, that in some cases an abnormality of mind may be of such nature or degree as to also encompass unsoundness of mind. However, this did not mean they were co-extensive in all cases. An accused suffering from an abnormality of mind may nevertheless possess the critical faculties to know that what he was doing was wrong: *see Public Prosecutor v Took Leng How* [2005] 4 SLR(R) 472 at [63]. In any event, what is necessary for the plea of unsoundness of mind to succeed, even for an offence under the MDA, is that the accused was shown to have been incapable of knowing the nature of the act he was committing, or incapable of distinguishing right from wrong.

114 In this regard, I found that apart from the lack of psychiatric evidence, the accused was in fact aware at the material time that what he was doing was illegal. Indeed, the accused accepted on the stand and in the ASOF, that he had paid the courier in large denominations because of previous concerns that counting notes in public would take time (at [21] above).[175] The inference to be drawn was that the accused was aware of the risk of detection of an *illegal* activity and was therefore taking active steps to mitigate the said risk of

[175] The accused's third statement, at para 18, at 2AB 551-552; NE, 27 March 2018, 94:7-13.

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detection.

The accused was not labouring under any command hallucinations, and if he was he would have had a capacity to resist them

115 The accused's second alternative defence was that he was "follow[ing] the instruction[s]" of the "voice" when he ordered the two pounds of heroin containing the 27.61 g of diamorphine.[176] As alluded to earlier, it was also the Defence's case (at [39] above) that from when he received the 27.61 g of diamorphine he had not deviated in his intention to commit suicide. Hence, the accused had possessed the heroin *throughout* for the purpose of "smoking [the diamorphine] to freedom" by overdosing on the drug.[177]

116 It followed from my earlier findings that since a diagnosis of hallucinations had not been made out, the accused was unlikely to have experienced a *command* hallucination. I had also found that the accused was not suffering from SIDD or SIPD. While the absence of SIDD and SIPD was not determinative as to whether the accused had heard a command hallucination, it meant that there were no mental disorders that could have sapped the accused's ability to resist any purported command hallucination. These findings meant that the accused could not have been acting under a command hallucination when he purchased the 27.61 g of diamorphine and kept it in his possession.

[176] NE, 27 March 2018, 117:16-17.

[177] DCS, at para 88.

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117 For completeness, I would add that, even if I was wrong on the existence of SIPD and SIDD, I would still have rejected the second alternative defence for the following reasons:

(a) Even if the accused was experiencing hallucinations, he did not hear the *specific* formulation of the command hallucination he had alleged. According to the psychiatric evidence, this specific formulation was implausible because command hallucinations were generally short and lacked specificity;

(b) Even if he had heard the command hallucination as alleged, the psychiatric evidence established that the more specific the hallucination, the easier it was to resist. Indeed, the accused himself had testified to a capacity to resist the "voice";

(c) The accused's own account of the "voice" and the degree to which he was following it was internally inconsistent; and

(d) Even if the accused was unable to resist the alleged command hallucination when he ordered and received the 27.61 g of diamorphine, evidence of the accused's phone records and his conduct made it clear that he had no intention of committing suicide.

118 Hence, under all available scenarios, at the time of his arrest, the accused's possession of the diamorphine could not have been for the purposes of smoking it to commit suicide. He therefore had not displaced the presumption under s 17 of the MDA.

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The accused's account of the voice's instructions was implausibly detailed and specific to be a command hallucination

119 Dr Ung considered it "highly implausible" that the accused heard the particular formulation of command hallucination telling him to buy two pounds of heroin and smoke himself to death.[178] In his report, Dr Ung explained:[179]

> [The accused's] report of voices telling him to consume such extreme amounts of heroin is unusual in that this would also necessitate generating a large amount of money to fund the purchase of heroin which would subsequently require a fair amount of planning and execution (it would have been more common to expect such command hallucinations to command one to overdose and die on more easily available substances such as paracetamol or even sleeping pills – there is no record that he acted in such fashion prior to arrest)…

Dr Ung further elaborated during his testimony that:[180]

> …Generally, command hallucinations tend to be brief and related to the goal at hand. For example, commonly it would be "Go and kill yourself, just jump." They can overdose. Rather than the specifics, you know, to go and buy a specific amount to take it over a specific number of days. So I find that naturally, I mean, pretty---I'm a bit sceptical. And conveniently, you know, the voice tells him to take an amount that would, you know, bring him below a capital crime. I think that's kind of even more sceptical…

120 Thus Dr Ung was sceptical of the accused's claim to have heard a command hallucination entailing such a high level of specificity, given that command hallucinations tended to be brief and related to the goal at hand.

121 Dr Gupta similarly concurred that, as command hallucinations were usually short and directed, it was unlikely that a command hallucination would

178 NE, 28 March 2018, 105:16-19.

179 Dr Ung's second report, at para 16, 1AB 145-10.

180 NE, 28 March 2018, 96:22-28

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have such a degree of detail as alleged by the accused.[181] Notably, Dr Winslow did not disagree that command hallucinations were simple and direct. Rather, he disagreed that the command hallucination alleged by the accused was very detailed at all.[182]

122 In my view, the alleged command hallucination was detailed and specific, not merely as to its content, but also as to its execution. From the moment the accused heard the command hallucination, various steps had to be taken to bring the task to fruition (at [20]-[22] above), including placing orders with Billa Visu, specifying quantities, taking instructions for delivery, waiting for the delivery (and the call that delivery had arrived). This was not to mention the accused's ability to recall and cater for the courier's preference for notes in large denominations to facilitate smooth payment of the transaction (see [21] above). Indeed, while the accused did not actually consume any of the 27.61 g of diamorphine from the shipment, he still took care to unbind the bundles and store them with the previous shipment of 8.81 g of diamorphine. As a whole, the accused's actions displayed a degree of planning, which made it unlikely that the accused was subject to a command hallucination.[183]

The accused would have the ability to resist the alleged "voice"

123 I accepted Dr Ung's evidence that "the longer [the command hallucination] drags on, the more steps that it involves…the more likely they would…not yield to it."[184] It followed from the discussion (at [121]-[122] above) that given the specificity in the command and the intervening steps thereafter,

181 NE, 29 March 2018, 17:27-18:4.

182 NE, 28 March 2018, 61:7-11.

183 NE, 29 March 2018, 18:2-4.

184 NE, 28 March 2018, 97:19-26.

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the accused would have been capable of resisting any alleged hallucination.

124 Dr Gupta was of the view that the amount of resistance may depend on such factors as the quality of the treatment the patient was receiving, and the mood which the patient was in. However, by definition, hallucinations were difficult to control, manipulate or negotiate with.[185] In the present case, Dr Gupta's records established that on the accused's own account he was capable of negotiating with the voice, and had around the time of the alleged offence argued with it.[186]

125 This was supported by the accused's testimony that he was generally capable of refusing and arguing with the demands of the "voice".[187] Indeed, on the stand, the accused stated that if he disobeyed or "talk back" to the "voice" he would "feel very bad". However, he also accepted that he had a choice to follow what the "voice" was saying, and he was not forced to follow it.[188]

126 As to the material time, Dr Gupta's clinical notes and report indicate that the accused was arguing with the alleged command hallucination, at least after he received the 27.61 g of diamorphine:[189]

> Prior to the index offence, allegedly he heard a 'voice' (which allegedly 'came back in December 2014/January 2015) telling him to buy 2 pounds of Heroin and to smoke till death. *He bought the Heroin but then 'told the voice that he did not want to die* and that he wants to make it up with his son'.
>
> [Emphasis added.]

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185 NE, 29 March 2018, 18:7-11.

186 NE, 29 March 2018, 18:14-16.

187 NE, 27 March 2018, 92:1-2.

188 NE, 27 March 2018, 90:4-14.

189 Dr Gupta's report, at para 18, 1AB 145; NE, 29 March 2018, 9:19-26.

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127 Even taking the accused's account at its highest, he demonstrated a capacity to resist any alleged hallucination that told him to continue possessing the diamorphine for the purposes of smoking himself to death on it. This much was plainly obvious, since despite already being in possession of one pound of heroin, and even after receiving an additional two pounds of heroin, there was no objective evidence that the accused actually took any steps towards smoking himself to death.[190]

The accused's conduct and testimony was internally and externally inconsistent with the alleged command hallucination

The accused's account of the "voice" heard on 15 February 2015 was internally inconsistent

128 The accused offered varying accounts as to the voice's effect on his actions and motivations. It was his claim that after hearing the voice on 15 February 2015 telling him to stop selling drugs he decided he "would do what the male voice told [him] to [do] as it was a good thing to do."[191] The accused claimed he "followed" the voice and decided to stop selling drugs and contacting his clients.[192]

129 However, the Prosecution submitted that at various points the accused proffered *different* reasons for allegedly wanting to stop trafficking. For instance, in his sixth statement, the accused stated it was because he "found [he] had enough money to give to [his] lawyer and son and stop all activities and die."[193] Similarly, the accused told Dr Gupta that he stopped trafficking three

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190 PCS, at para 42.

191 The accused's third statement, at para 17, at 2AB 551.

192 NE, 27 March 2018, 90:12, 27-29.

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days prior to his arrest because "he had enough money and he wanted to spend time with his son before serving his time for the offence he was on bail for".[194] Neither the sixth statement, nor his account to Dr Gupta featured the fact that he had been told by a "voice" on 15 February 2015 to stop trafficking.[195]

130 I accepted the Prosecution's submission that the accused's internally inconsistent accounts on 15 February 2015 militated contextually against any finding that he had heard and complied with the alleged command hallucination on 17 February 2015.[196] While I was prepared to accept that the accused may have been hearing voices, his inconsistent and varying accounts about the alleged "voice" he heard on 15 February 2015 diminished his credibility as to the *content,* or the *effect*, of the voices overall.

The objective evidence showed the accused had no intention of committing suicide

131 The Prosecution submitted that the objective evidence showed that the accused had no intention of halting his trafficking activities or committing suicide. I agreed. In particular, the Prosecution relied on the accused's phone records, which revealed the following:

(a) The accused's account that a voice told him on 15 February 2015 to stop trafficking in drugs was contradicted by 304 discrete phone records (with 136 messages or calls emanating from him) from 15 February 2015 to the time of his arrest;[197]

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193 The accused's sixth statement, at para 126, at 2AB 643.

194 Dr Gupta's report, at para 10, at 1AB 144.

195 PCS, at paras 20-21.

196 PCS, at para 33.

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(b) In particular, the accused continued to contact various persons on 15 and 16 February 2015, who were known to him as “Taxi Man”, “Boyboy1”, Prince Tai Zi” and “Old Man Lao”. On the stand, the accused admitted that some of these were his clients.[198] The Prosecution suggested that these showed the accused remained very much in the business of drug trafficking.[199]

(c) The accused’s account that he was acting on the instructions of the “voice” on 17 February 2015 to order two pounds of heroin was debunked by call records on 17 February 2015 showing it was Billa Visu who had contacted him, and not the other way around;[200] and

(d) The accused’s purported intention to kill himself as he was “just follow[ing] the instruction” of the voice on 17 February 2015 to purchase two pounds of heroin to commit suicide[201] flew in the face of several messages from the accused to his female friends asking to spend time with them.[202]

132 The accused’s explanation for these messages and calls was that he was still receiving these numerous calls from clients who had not yet known of his decision to discontinue trafficking.[203] The accused denied that the messages exchanged with “Boyboy1”, “Old Man Lao” and “Koon Ah” were drug-related.[204]

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197 PCS, at paras 44-48; Exhibit E.

198 PCS, at para 44; NE, 27 March 2018, 83:12-84:21.

199 PCS, at paras 44, 46 and 47.

200 PCS, at para 35.

201 NE, 27 March 2018, 117:16-19.

202 PCS, at para 40(b), 40(f), 40(h), and 47.

203 NE, 27 March 2018, 106:25-28.

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133 However, the following messages suggested otherwise:

Exhibit E serial no.	Message recipient	Time of message	Details
32	"Boyboy1" (from the accused)	15 February 2015 at 4:53 pm	"Bro, no more buyer for the time being. Maybe later got order. Can go back to office first."
109	The accused (from "Koon Ah")	16 February 2015 at 12:46 pm	Translation: "Brother Sheng, things are ready here. Thank you."[205]
113	"Koon Ah" (from the accused)	16 February 2015 at 12:50 pm	Translation: "Alright. I have received. Reach at 1.30."[206]
167	The accused (from "Old Man Lao")	16 February 2015 at 9:49 pm	Translation: "Give me 1.5 tomorrow morning."[207]
170		16 February 2015 at 11:02 pm	Translation: "Tomorrow call me. I want to be on time."[208]
171	"Old Man Lao" (from the accused)	16 February 2015 at 11:06 pm	Translation: "Alright. Before coming tomorrow morning, I will give you a call before coming."[209]

134 I found the accused's explanation to be flatly contradicted by the clear drug-related content of the messages. Indeed, the accused admitted on the stand

[204] NE, 27 March 2018, 83:23-84:12.

[205] NE, 27 March 2018, 109:3-4.

[206] NE, 27 March 2018, 109:5-12.

[207] NE, 27 March 2018, 107:11.

[208] NE, 27 March 2018, 108:15-19.

[209] NE, 27 March 2018, 108:4-5.

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that the messages with "Koon Ah" were in relation to "Koon Ah" supplying him with "ice".[210] Nor was it a tenable explanation that the calls were from clients unaware that he had discontinued trafficking, since many of the calls and messages originated *from* the accused and not the other way around.[211]

135 None of the phone records or messages suggested any evidence that the accused had heard a "voice" on 15 February 2015 telling him to stop trafficking, much less that after he heard the voice, he no longer wanted to sell drugs.[212] To the contrary, the following messages with a drug client "Prince Tai Zi" put paid to the accused's account:

Exhibit E serial no.	**Message recipient**	**Time of message**	**Details**
136	"Prince Tai Zi" (from the accused)	16 February 2015 at 4:06 pm	"Bro, the deal total are My 100g is ="
137		16 February 2015 at 4:07 pm	"20 set x $220 ="
138		16 February 2015 at 4:09 pm	"$4400 Plus half set that is $110 Total $4510"
139		16 February 2015 at 4:12 pm	"Yours is 100g x $21 = $2100 My 4510-2100 = $2410 balance"
140		16 February 2015 at 4:14 pm	"Meeting later at 8-9pm. Please delete all messages for this conversation. Thanks."

210 NE, 27 March 2018, 109:10-12.

211 NE, 27 March 2018, 107:1-110:9.

212 NE, 27 March 2018, 91:17-18.

136 As to the critical time of the alleged command hallucination on 17 February 2015, the accused's phone records showed no pause in his trafficking activities. In fact, the Prosecution showed that on 18 February 2015, at 5:11 pm, the accused was busy ordering new supplies of drugs from Billa Visu in relation to a new drug client, "Ham".[213] When confronted with this evidence, the accused claimed that these calls were in relation to the collection of the 27.61 g of diamorphine. This explanation conflicted with the accused's own admission that he collected the 27.61 g of diamorphine several hours *earlier* at 10 am on 18 February 2015 (see [20] and [35] above), an admission borne out by phone records showing several calls from Billa Visu around this time.[214] Hence, even if the accused had heard a hallucination telling him to stop trafficking, the accused showed a healthy resistance to such a command.

137 Nor did the accused show any inclination to commit suicide. It followed from the above (at [131]-[136]) that if the accused was still trafficking, it would have been for the purposes of earning monies for the future. This did not cohere with knowledge of impending demise.

138 The accused's lack of intention to commit suicide was made most evident in the social activities in the accused's phone records. The latest time the accused could have placed order for the second shipment of 27.61 g of diamorphine was his latest call from Billa Visu on 17 February 2015 at 12:41 pm.[215] This meant that the accused would have heard any alleged command hallucination prior to that. However, the accused's phone records after this time showed him continuing to socialise and communicate with his friends, "Ah Mya" and "Ah Ling". In particular, he had four lengthy conversations with "Ah

[213] Exhibit E, serial nos. 253-254, 256-265, 267-280; NE, 27 March 2018, 110:26-111:26.

[214] ASOF, at para 26, Exhibit E, serial nos. 226 and 228.

[215] Exhibit E, at serial no. 186; PCS, at para 35.

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Mya"[216] and sent a message[217] and had three short conversations with his female friend, "Ah Ling".[218]

139 Around 9:47 pm on 18 February 2015, just prior to his arrest, the accused also added four new contacts to his WeChat.[219] The Prosecution suggested the accused must have intended to contact them in the future.[220] I agreed. The accused's phone records and his social activities demonstrably showed this was not a person who had the intention of committing suicide, regardless of whether he was following a "voice" or not.

140 Indeed, the accused's fourth statement clearly demonstrated a contradictory intention. He stated that the heroin in exhibits "E1" to "E5" would last him about two months and "[he] planned to consume the heroin using the "chase the dragon" method over the next two months".[221] The 27.61 g of diamorphine were contained in exhibited "E1" to "E4". (Exhibit "E5" contained another 5.59 g of diamorphine.) In other words, the accused was explaining to the officer recording his fourth statement that he planned to consume the 27.61 g of diamorphine over a period of two months. This explanation is clearly inconsistent with the accused's defence that, from the moment he received the 27.61 g of diamorphine, he had not deviated in his intention to commit suicide and that he possessed the 27.61 g of diamorphine throughout for the purpose of smoking himself "to freedom" by overdosing on the drug.

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216 Exhibit E, at serial nos. 193, 204, 242, and 289; NE, 27 March 2018, 85:2.

217 Exhibit E, at serial no 200; NE, 27 March 2018, 114:8-15.

218 NE, 27 March 2018, 114:18-26.

219 Exhibit "E", at serial nos. 298-301.

220 PCS, at paras 40 and 40(g).

221 The accused's fourth statement, at para 29, at 2AB 567.

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141 To be clear, the accused had *not* run a separate defence of consumption before me. In any event, any claim that all 36.42 g of the diamorphine was meant for his consumption over a period of two months would not sit easily with his account to Dr Winslow that he purchased one pound of heroin every three to four days for selling and for personal consumption.[222] As this defence was not canvassed before me either in the course of the evidence, or in submissions, I say no more about it.

142 The accused had not rebutted the presumption under s 17 of the MDA. The clear inference to be drawn from the objective evidence was that at the material time, the accused remained busy with the sale and purchase of drugs and that the diamorphine found in his possession at the time of his arrest on 18 February 2015, including the 27.61 g of diamorphine, were possessed by the accused for the purpose of trafficking.

143 I found that the Prosecution has proven the charge beyond a reasonable doubt, and I convicted the accused on the capital charge.

The accused was not eligible for the alternative sentencing regime under s 33B(2) of the MDA

144 As I disbelieved the accused's claim that the 27.61 g of diamorphine was purchased in compliance with the alleged command hallucination, it followed that a substantial part, if not all of the 27.61 g of diamorphine was purchased for the purposes of resale and not for the purposes of his own suicide. The accused also admitted (at [32] above) that he possessed an intention to re-sell at least part of the 8.81 g of diamorphine.

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[222] Dr Winslow's amended report, at para 16, at Exhibit D2; NE, 27 March 2018, 83:3-5, 28 March 2018, 41:1-19.

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145 In the circumstances, I found that the accused's activities were not restricted to those set out in s 33B(2)(*a*) of the MDA. He was therefore not eligible for the alternative sentencing regime. Accordingly, I imposed on the accused the death sentence as mandated by s 33 read with the Second Schedule of the MDA.

Pang Khang Chau
Judicial Commissioner

Ang Feng Qian and Zhou Yihong
(Attorney-General's Chambers) for the Prosecution;
Chua Eng Hui (RHTLaw Taylor Wessing LLP) and Wong Seow Pin
(S P Wong & Co) for the accused.

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