IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 224

Magistrate's Appeal No 9001 of 2021

Between

Rafael Voltaire Alzate

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark Sentences]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

Rafael Voltaire Alzate
v
Public Prosecutor

[2021] SGHC 224

High Court — Magistrate's Appeal No 9001 of 2021
Sundaresh Menon CJ
27 July 2021

28 September 2021

Sundaresh Menon CJ:

Introduction

1 After a night of drinking, the appellant, Rafael Voltaire Alzate ("Alzate"), made an aborted attempt to ride his motorcycle out of a basement carpark. Alzate struggled with his motorcycle as he attempted, unsuccessfully, to exit the carpark where he had left his motorcycle, intending to ride home. He fell and was unable to lift his motorcycle. As it turned out, this was fortunate for him because he was in fact intoxicated at that time. He was eventually discovered, charged, convicted and sentenced to a fine and to a disqualification order by a District Judge (the "District Judge"): see *Public Prosecutor v Rafael Voltaire Alzate* [2021] SGDC 32 (the "Judgment").

2 Alzate paid the fine and his principal contention in this appeal was that there were "special reasons" owing to which, a disqualification order should not

be imposed on him. Having heard submissions from both parties, I found that there was nothing special in his reasons that would justify displacing the disqualification order. I therefore dismissed the appeal, and now explain the grounds for my decision.

Facts

3 Alzate is a 44-year old Singaporean male. He worked as a lecturer at ITE College East from 2009 to 2019 and served as the Head of Enterprise for its Enterprise Development Centre. On 11 June 2020, Alzate met one of his former students from ITE College East, in order to counsel him on the management of his business.

4 His former student appreciated Alzate's kindness and brought some whiskey as a gesture of gratitude. They started drinking at about 9 pm and stopped at about 1 am on 12 June 2020. Alzate apparently imbibed about three or four glasses of whiskey.

5 Alzate had ridden his motorcycle to ITE College East for the meeting at about 5pm and parked it at the basement carpark. After the meeting, he attempted to ride his motorcycle home. As the District Judge put it, this was a "poor decision on his part": Judgment at [5]. In his state of intoxication, he managed to start his motorcycle and to ride it a short distance within the carpark but he failed to reach the exit. The CCTV footage showed that he lost his balance and fell to the ground together with his motorcycle; he was then unable to lift his motorcycle up and so could not proceed.

6 When the police arrived at the scene at about 1.28am on 12 June 2020, the officer noted that Alzate "reeked strongly of alcohol". The officer administered a preliminary breath test which Alzate failed, and he was then

arrested and escorted to the station for a Breath Analyzing Device ("BAD") test. The BAD test was conducted that morning at about 3.31am; it revealed that Alzate's breath contained 62 microgrammes of alcohol in every 100 millilitres of breath.

7 Alzate was charged for drink driving under s 67(1)(*b*) read with s 67(2)(*a*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"), as follows:

> You are charged that you, on **12 June 2020**, at about 1.28 a.m., along **the carpark of 'ITE East College' off Simei Avenue**, Singapore, whilst riding motorcycle **FBN84K,** did have so much alcohol in your body that the proportion of it in your breath, *to wit*, not less than **62 microgrammes of alcohol in 100 millilitres of breath**, exceeded the prescribed limit of 35 microgrammes of alcohol in 100 millilitres of breath, and you have thereby committed an offence under Section 67(1)(b) and punishable under Section 67(1) read with Section 67(2)(a) of the Road Traffic Act (Cap 276, 2004 Rev Ed).
>
> [emphasis in original]

8 He pleaded guilty to the charge and the District Judge sentenced him to a fine of $4,000 and a disqualification period of 30 months. Dissatisfied with the imposition of the disqualification order, Alzate filed a notice of appeal on the same day. Alzate paid the fine and the District Judge granted a stay of execution on the disqualification order pending the outcome of the appeal.

The District Judge's decision

9 Before the District Judge, the Prosecution had sought the imposition of a fine of $4,000 and a disqualification from holding or obtaining all classes of driving license ("DQAC") for a period of 30 months, relying on *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Edwin Suse*"): Judgment at [18].

10 The Defence took no issue with the proposed fine: Judgment at [22]. It submitted, however, that the court should exercise its discretion not to impose any disqualification prescribed under s 67(1)(*a*) of the RTA for the following reasons (Judgment at [25]–[33]):

(a) Alzate's personal circumstances: he had been acting in an altruistic endeavour at the time by guiding his former student in his business even though he was no longer with ITE College East.

(b) There were special reasons in this case:

(i) Alzate was, in fact, acting responsibly by waiting next to his fallen motorcycle.

(A) He had only ridden a short distance of approximately 52.9m within the carpark, at which point he realised that he should not continue to ride his motorcycle;

(B) After he lost his balance and fell with the motorcycle, he attempted to seek help to lift his motorcycle but there was no one else in the carpark;

(C) He had exited the carpark on foot to seek help but to no avail. He could not abandon the motorcycle as it would have caused an obstruction, and it could also have been a danger to others because of the spillage of fuel.

(ii) Alzate's act had not endangered anyone since nobody else had been at the carpark at the material time.

(iii) Alzate made the conscious decision not to ride out from the carpark and onto the road. He, in fact, had no intention to ride home once he realised that he was in no condition to do so.

11 The Defence also relied on a number of cases, namely: (a) *Toh Yong Soon v Public Prosecutor* [2011] 3 SLR 147 ("*Toh Yong Soon"*) at [5]; (b) *Prathib s/o M Balan v Public Prosecutor* [2018] 3 SLR 1066 ("*Prathib"*) at [11]; (c) *Muhammad Faizal Bin Rahim v Public Prosecutor* [2012] 1 SLR 116 ("*Muhammad Faizal"*) at [42]; (d) *Coombs v Kehoe* [1972] 1 WLR 797 ("*Coombs*") and (e) *Chatters v Burke* [1986] 1 WLR 1321 ("*Chatters*"). When questioned by the District Judge as to their relevance, however, the Defence accepted that these decisions were not applicable to the present case or otherwise of assistance.

12 The District Judge nonetheless considered the cases and observed that, as stated in *Muhammad Faizal*, "special reasons" should be narrowly interpreted, so that it was only reasons connected with *the offence* and not with the *offender* that should be considered: Judgment at [51]. *Toh Yong Soon*, *Prathib* and *Coombs* were of no assistance to the Defence because no special reasons were found in any of those cases: Judgment at [52]–[54]. As for *Chatters*, it was not binding and could, in any event, also be distinguished on the facts because there was an urgent need for the accused person in that case to drive a short distance: Judgment at [54]–[57].

13 The District Judge also had regard to three other cases, namely: (a) *Roland Joseph George John v Public Prosecutor* [1995] SGHC 245 ("*Roland Joseph*"); (b) *Sivakumar s/o Rajoo v Public Prosecutor* [2002] SGHC 28 ("*Sivakumar*"); and (c) *Cheong Wai Keong v Public Prosecutor* [2005] SGHC 126 ("*Cheong Wai Keong*"). In particular, the District Judge noted that

in *Cheong Wai Keong*, Yong Pung How CJ had pointed out that the English cases such as *Coombs* and *Chatters* were not helpful in guiding the approach that we should take. In those cases, regard had been had to the distance travelled and to whether there was other traffic at the time, in coming to a decision as to whether or not the prescribed period of disqualification should be imposed or could be reduced: Judgment at [65]. Yong CJ considered that this would be difficult to apply and instead considered that a simple rule would be more workable and thus preferable; that simple rule being that a person who is convicted of drink driving should *presumptively* be disqualified. The courts would otherwise find it an impossible task to consider the significance of various distances in deciding whether to dispense with or reduce the period of disqualification. The presumptive rule could be departed from where "special reasons" exist, but it would be for the accused person to establish this and the relative shortness of the distance travelled would not in itself typically constitute a "special reason": Judgment at [66].

14 Ultimately, the District Judge concluded that there were no special reasons that justified not imposing the prescribed disqualification order in this case. This was because (Judgment at [69]–[75]):

(a) Alzate had, of his own volition, consumed a considerable amount of alcohol, and there was no justification at all for him to attempt to ride his motorcycle.

(b) The fact that he had only driven for a short distance within the carpark did not constitute a special reason, as was held in *Cheong Wai Keong*.

(c) The salient fact is that Alzate *did* attempt to ride home and the main reason he did not get very far was because he was too drunk and had lost his balance as a result.

(d) His professed intention to abandon the plan to ride home was irrelevant. Furthermore, it was untenable for Alzate to suggest that he had changed his mind about riding home, when in fact he was not *able* to do so.

(e) The contention that any potential harm was low at that time of the morning could not possibly be a special reason.

(f) The fact that Alzate may have been acting altruistically on a mission to help a former student also could not amount to special reason.

15 In respect of the sentence to be imposed, the Prosecution submitted (and the District Judge agreed) that the *Edwin Suse* framework for drink driving where no other damage or injury is caused should be modified in view of the 2019 amendments to the the RTA. Relying on the Prosecution's submissions, the District Judge arrived at a revised framework as follows (Judgment at [77]):

Level of alcohol (µg per 100 ml of breath)	**Range of fines**	**Range of disqualification**
35 – 54	$2,000 – $4,000	24 – 30 months
55 – 69	$4,000 –$6,000	30 – 36 months
70 – 89	$6,000 – $8,000	36 – 48 months
≥ 90	> $ 8,000	48 – 60 months (or longer)

16 Applying that framework, the District Judge found that Alzate's alcohol level (62 µg/100ml of breath fell within the lower end of the second band. Accordingly, the District Judge agreed with the Prosecution's submission that the disqualification period should be 30 months: Judgment at [78]. The District

Judge also noted that Alzate accepted the appropriateness of the $4,000 fine (which would fall within the lower end of band 2): Judgment at [79], though he evidently did not accept that the accompanying disqualification was appropriate.

The appellant's submissions

17 In his submissions, Alzate repeated several of the points he had raised before the District Judge, including the fact that he had ridden only a short distance within the carpark, that he could not be expected to have abandoned his vehicle, and that he was a socially responsible person on an altruistic endeavour.

18 Additionally, he submitted that the District Judge had misdirected herself by failing to recognise that there was a "special reason" in this case, in that Alzate had only ridden a short distance in an empty carpark, and did not intend to ride onto the public road. On this basis, the cases that the District Judge had relied on, including *Roland Joseph* and *Sivakumar*, were said to be distinguishable because the accused persons in those cases had driven on public roads. Similarly, *Cheong Wai Keong* was also said to be distinguishable because the appellant in that case had driven on a public road before entering the carpark.

19 Alzate accepted that *Coombs* establishes that the shortness of the distance that had been travelled would not in itself be a sufficient ground for displacing the prescribed disqualification order. However, he contended that this had to be seen in conjunction with other factors, such as the fact that there was no possibility of his coming into contact with or causing harm or injury to others, and also that the applicable traffic conditions meant that no danger was posed to any others. This approach was said to be consistent with that in

Chatters. In any case, the District Judge was said to have failed to appreciate that although the English cases were not binding on her, they were nonetheless persuasively reasoned and ought therefore to have been followed.

The Prosecution's submissions

20 The Prosecution, on the other hand, submitted that the appeal was baseless for several reasons. First, the District Judge was correct in holding that "special reasons" should be narrowly construed. This has been made clear in *Prathib* and *Muhammad Faizal*.

21 Second, the fact that only a short distance had been travelled does not constitute a special reason. That precise issue was considered in *Cheong Wai Keong*, and the court had expressly stated at [16] that "the distance travelled did not constitute a 'special reason' as such". Furthermore, as had been noted by the District Judge, the only reason Alzate had travelled just a short distance was because he was so inebriated that he could not control his motorcycle properly.

22 Third, it was wholly untenable for Alzate to suggest that it was possible to distinguish between locations where one might drink and drive without having to face the full force of the law. Such an argument was without legal basis and the language of s 67(1) of the RTA clearly states that it is an offence for a person to drink and drive "on a road or any public place". The Court could not be expected to differentiate the consequences based on the precise location where or time when the offence was committed.

23 Fourth, Alzate's assertion that he had no intention to ride onto a public road was inconsistent with his mitigation plea, in which he had expressly asserted that he intended to ride home but changed his mind after realising he was "too tipsy". In any case, his subjective intentions could not constitute a

"special reason". The District Judge was, in any case, correct to treat this claim with some circumspection because the screenshots of the CCTV footage showed that Alzate was in fact *unable* to ride home; the corollary of this had to be that if he had not felt too tipsy, he would have gone ahead and ridden his motorcycle home.

24 Finally, the English authorities did not aid Alzate. *Cheong Wai Keong* had expressly rejected the approach taken in *Chatters* and *Coombs*. Further, *Chatters* was distinguishable because there was an urgent need for the accused person to drive and further because it was clear on the evidence that the accused person in that case had no intention to drive any further than was necessary.

My decision

The relevant statutory provisions

25 Section 67 of the RTA reads as follows:

> **Driving while under influence of drink or drugs**
>
> 67.—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —
>
> > (*a*) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle; or
> >
> > (*b*) has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit,
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $2,000 and not more than $10,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a second or subsequent conviction, to a fine of not less than $5,000 and not more than $20,000 and to imprisonment for a term not exceeding 2 years.
>
> (2) Subject to sections 64(2D) and (2E) and 65(6) and (7), a court convicting a person for an offence under this section in the following cases is to, unless the court for special reasons thinks

> fit to not order or to order otherwise, order that the person be disqualified from holding or obtaining a driving licence for a period of not less than the specified period corresponding to that case, starting on the date of the person's conviction or, where the person is sentenced to imprisonment, on the date of the person's release from prison:
>
> (*a*) for a first offender — 2 years;
>
> (*b*) for a repeat offender — 5 years.
>
> (2A) Subject to sections 64(2D) and (2E) and 65(6) and (7), where a court convicts a person for an offence under subsection (1) and the person has been convicted (whether before, on or after the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019) on 2 or more earlier occasions of an offence under subsection (1), section 68, or subsection (1) as in force immediately before the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019, the court is to, unless the court for special reasons thinks fit to order a shorter period of disqualification, order that the person be disqualified from holding or obtaining a driving licence for life starting on the date of the person's conviction.
>
> (3) Any police officer may arrest without warrant any person committing an offence under this section.
>
> (4) In this section, a repeat offender means a person who is convicted of an offence under this section and who has been convicted (whether before, on or after the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019) on one other earlier occasion of —
>
> (*a*) an offence under subsection (1) or section 68; or
>
> (*b*) an offence under subsection (1) as in force immediately before the date of commencement of section 17 of the Road Traffic (Amendment) Act 2019.

The legislative changes and the appropriate framework

26 The present iteration of the offence under s 67 of the RTA was enacted on 1 November 2019, following the passing of the Road Traffic (Amendment) Act 2019 (Act 27 of 2019) (the "Amendment Act"). The reforms introduced through the Amendment Act were aimed at providing stronger deterrence against irresponsible driving and to tighten the regulatory regime against irresponsible driving: *Singapore Parliamentary Debates, Official Report*

(8 July 2019) vol 94. Specifically, in relation to the offence of drink driving, Second Minister for Home Affairs, Mrs Josephine Teo explained as follows:

> … Drivers who are drunk or drug-impaired show a blatant disregard for the safety of other road users. … Currently, such motorists typically face the same maximum penalties as other motorists who cause accidents. The judge may take into consideration that the offender was driving under influence during the sentencing itself. *But it would be clearer to have our intentions codified in law. In fact, our intention is for offenders driving under influence to face stiffer penalties to signal the aggravated seriousness of their actions.*
>
> …
>
> … during the public engagement process, respondents felt that even a standalone driving under influence offence where no accident is caused, should attract higher penalties to better reflect its gravity.
>
> We agree with this view. The consumption of alcohol or drugs already makes a motorist a danger to other road users. Section 67 in Clause 17 of the Bill will raise the penalties to about double the current levels. We will also raise the existing minimum DQ period to two years for first-time driving under influence offenders and five years for second-time driving under influence offenders. A lifelong disqualification will be imposed on third-time driving under influence offenders.
>
> [emphasis added]

27 In keeping with Parliament's intention, significant changes were also made to the punishments prescribed under s 67 of the previous version of the RTA (the "2019 RTA"), which read as follows:

> **Driving while under influence of drink or drugs**
>
> **67.**—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —
>
> > (*a*) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle; or

> (*b*) has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit,
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and, in the case of a second or subsequent conviction, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months.
>
> (2) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving licence for a period of not less than 12 months from the date of his conviction or, where he is sentenced to imprisonment, from the date of his release from prison.
>
> (3) Any police officer may arrest without warrant any person committing an offence under this section.

28 An issue therefore arises as to the framework that should apply in the light of these changes. The sentencing framework set out in *Edwin Suse* (the "*Edwin Suse* Framework") has guided sentencing courts in cases of driving under the influence for the past eight years. The *Edwin Suse* Framework is as follows:

Level of alcohol (µg per 100ml of breath)	**Range of fines**	**Range of disqualification**
35–54	$1000–$2000	12–18 months
55–69	$2000–$3000	18–24 months
70–89	$3000–$4000	24–36 months
≥ 90	>$4,000	36–48 months

29 The penalties for an offence under s 67(1)(*b*) have been increased significantly following the 2019 statutory amendments, reflecting Parliament's

view that there is a need for even greater deterrence against drink driving. Prior to the amendment, s 67(1)(*b*) provided that a first offender would be liable on conviction to a fine of not less than $1000 and not more than $5000 or to imprisonment for a term not exceeding 6 months. Section 67(2) also provided for a disqualification period of not less than 12 months. Following the amendment, s 67(1)(*b*) now provides that a first offender would be liable on conviction to a fine of not less than $2000 and not more than $10,000, or to imprisonment for a term not exceeding 12 months or to both. Section 67(2) provides for a disqualification period of two years. In short, the entire range of the sentencing options was doubled following the amendments.

30 As a result, the District Judge suggests that the applicable framework should now be as follows:

Level of alcohol (µg per 100ml of breath)	**Range of fines**	**Range of disqualification**
35–54	$2000–$4000	24–30 months
55–69	$4000–$6000	30–36 months
70–89	$6000–$8000	36–48 months
≥ 90	> $8000	48–60 months (or longer)

31 In my judgment, the framework proposed by the District Judge appropriately adjusts that which was laid down in *Edwin Suse* in order to utilise the full range of the increased statutory penalties that are now provided for under s 67(1)(*b*) of the RTA. Two minor adjustments, however, should be made. First, given that the current prescribed alcohol limit under s 67(1)(*b*) stands at 35 microgrammes per 100 millilitres of breath, the sentencing bands should begin

with the level of alcohol at 36 microgrammes per 100 millilitres of breath. Second, in relation to the fines where the detected concentration of alcohol is more than or equal to 90 microgrammes, the range should be between $8,000 to $10,000, given that s 67(1) that states that the fine imposed shall be "not more than $10,000". These changes are reflected in the framework as such:

Level of alcohol (µg per 100ml of breath)	**Range of fines**	**Range of disqualification**
36–54	$2000–$4000	24–30 months
55–69	$4000–$6000	30–36 months
70–89	$6000–$8000	36–48 months
≥ 90	$8000–$10000	48–60 months (or longer)

32 I make two additional points in relation to the application of this framework. First, this framework, like the one set out in *Edwin Suse*, is only applicable where *no harm* to person or property has eventuated (see *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 at [76]).

33 Second, it should nevertheless be borne in mind that this framework provides only *neutral starting points* based on the relative seriousness of the offence and considering *only* the level of alcohol in the offender's body. Regard should still be had to any aggravating or mitigating circumstances (see *Edwin Suse* at [22]), and the former, if they exist, *could* result in the custodial threshold being crossed. In the same vein, the presumptive range of the period of disqualification to be imposed under the last band should be 48 to 60 months given that the period of 60 months is the statutorily prescribed minimum

disqualification period for a repeat offender; this, however, may be exceeded should the circumstances warrant it.

The present facts

34 Before me, counsel for Alzate, Mr Luke Lee ("Mr Lee"), focussed primarily on the fact that the distance travelled was short, that there was no danger to other road users, and that Alzate, having realised he was in no position to ride his vehicle, had in fact wanted to stop. According to Mr Lee, unfortunately for Alzate, in trying to come to a stop, he accidentally fell with his motorcycle.

35 Taking the last point first, the difficulty with that contention is that the Statement of Facts and the CCTV footage simply do not bear out Mr Lee's contention. In fact, it is evident that Alzate lost his balance while riding, fell to the ground and was then unable to lift the motorcycle up. That was what put an end to any further question of his riding the motorcycle that night. The objective evidence simply does not support Mr Lee's contention that his client had had a change of heart and in fact *wanted* to stop riding.

36 That then quickly disposes of Mr Lee's remaining arguments. That Alzate only rode a short distance and did not endanger other road users simply cannot constitute a "special reason" because the fact is that the only reason this transpired as it did was because Alzate had been too drunk to ride any further. This was fortuitous and does nothing to limit his culpability. In the circumstances, there is no basis at all for the court not to impose the presumptive disqualification order. In fact, the District Judge imposed the fine and DQAC at the lowest end of the applicable band even though Alzate's level of alcohol was not at the lowest end of that band. In that sense, I consider that the District Judge

had been lenient and that there was no basis at all for suggesting that she imposed a sentence that was manifestly excessive. On the contrary, both the fine and the duration of the DQAC could have been higher based on the applicable framework.

Special reasons

37 Under s 67(2) of the RTA, it is mandatory for the court to order a period of 2 years' DQAC for a first offender and 5 years' DQAC for a repeat offender, unless the court for "special reasons" thinks it fit not to order this or to order a shorter period of disqualification (see [25] above). Such discretion was afforded to the courts even prior to the 2019 amendments and has remained in the current version of the RTA.

38 The law in respect of what would constitute a "special reason" has been set out in *Cheong Wai Keong*, where the court considered that this would be a "mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the court ought properly to take into consideration when imposing punishment". However, a circumstance that is peculiar to the *offender* rather than to the *offence* would not constitute a "special reason" (at [8]). The rationale for this is explained in *Public Prosecutor v Balasubramaniam* [1992] 1 SLR(R) 88, where the court observed that the Legislature, in giving the court discretion not to impose the prescribed disqualification period on account of "special reasons", recognised that an offence could be committed under "certain extenuating or pressing circumstances which may prevail upon the driver to take the risk of driving knowing that he was not fit to drive due to the presence of alcohol in his body" (at [21]). In short, the discretion that is vested in the courts may be exercised where there are special extenuating or pressing circumstances

that somehow mitigate the commission of the offence, and would not extend to circumstances that pertain to the person or character of the offender.

39 Even if "special reasons" have been established, the court must nonetheless go on to consider whether it should exercise its discretion in favour of the offender to not impose any disqualification that may be statutorily prescribed (*Cheong Wai Keong* at [8]). The discretion is thus a limited one and to be exercised only in exceptional circumstances, "having regard to the special circumstances as well as to the whole of the circumstances surrounding the commission of the offence". For example, if the offender had committed other traffic offences while driving under the influence of alcohol, or had a high alcohol content in his body, these factors could militate against the court's exercise of its discretion not to impose a disqualification order (*Sivakumar* at [25]). In *Cheong Wai Keong* (at [12]), the court made reference to the following factors listed by the court in *Chatters* as those to be considered in determining whether special reasons exist:

(a) how far the vehicle was driven;

(b) the manner in which the vehicle was driven;

(c) the state of the vehicle;

(d) whether the driver intended to drive any further;

(e) the road and traffic conditions prevailing at the time;

(f) whether there was any possibility of danger by contact with other road users; and

(g) the reason for the vehicle being driven.

In my judgment, these are useful factors that a court should have regard to as part of a broad and holistic inquiry in determining whether special reasons exist in each case, such that a disqualification period should not be imposed.

40 In *Cheong Wai Keong*, the specific question that arose was whether the fact that the appellant had driven for a short distance such that he was unlikely to come into contact with or endanger other road users amounted to a special reason that would justify reducing the period of disqualification. In that case, the appellant had parked his car by the side of the road, along double yellow lines. He then consumed alcohol with his friends, not intending to drive his car thereafter. He later realised that his car might obstruct other road users if he left it there and decided to move the car to the carpark that was just beside the road. After considering *Chatters* and *Coombs*, Yong CJ concluded at [14]–[16] that:

> … the English cases discussed above do not provide useful guidance to our courts when we are asked to determine whether "special reasons" exist. Courts in England often take time in considering the distance traveled, and whether there was other traffic at the time, before deciding whether or not there were special reasons to reduce the mandatory period of disqualification of 12 months.
>
> I was of the view that, while "special reasons" may be taken into account in deciding whether or not to reduce the period of disqualification, there should not be any consideration given to the distance travelled. Courts would find it an impossible task to try and determine the relevance of various distances in different cases in deciding on whether or not to allow the period of disqualification to be reduced. It would be difficult in practice to administer the law.
>
> To my mind, it would be preferable to lay down a simple rule that a person who is convicted of drink-driving should be disqualified for the mandatory 12 months period, if he has started the car and moved it at all, unless there are very "special reasons" for not doing so, bearing in mind that the distance traveled does not constitute a "special reason" as such.

41 There are two possible propositions of law that could be drawn from *Cheong Wai Keong*. First, as the Prosecution submits, *Cheong Wai Keong* has

been taken to stand for the proposition that the shortness of distance travelled cannot *in itself* be a "special reason". This is in contrast to the position that was held in earlier English decisions such as *R v Agnew* [1969] Crim LR 152 and *James v Hall* [1972] 2 All ER 59, which suggested that if the distance driven by a defendant is short, this could amount to a special reason. Secondly, *Cheong Wai Keong* might *also* stand for the proposition that in assessing whether "special reasons" exist, a court *should not* give any consideration to the distance travelled.

42 In my judgment, the former is to be preferred. A court should be able to have regard to the distance travelled as part of its overall analysis. It is likely that Yong CJ had intended to disagree with the broader proposition which might be inferred from *Coombs* – to the effect that a special reason would be found to exist if the distance driven is so short that the offender is unlikely to come into contact with other road users and danger is unlikely to arise. That, however, should not extend to a *general rule* that a court can *never* have regard to the distance travelled. Allowing the court to also have regard to the distance travelled enables a full view of the facts in question to be taken in coming to a conclusion as to whether special circumstances exist. The relevant factors will often have to be considered together in the round. Examples of the factors that could be considered as part of a broad inquiry into whether special reasons exist are set out at [39] above. Thus, for instance, where an accused may have had a plausible and cogent reason for driving while under the influence, but had driven further than could reasonably be considered to be necessary in the circumstances, this would strongly weigh against the court exercising its discretion not to impose a disqualification order against the offender.

43 In that light, I return to Alzate's case. It is clear that the factors he has relied on cannot constitute special reasons. Not only was this a case where he

was in effect *prevented* from exposing himself and others to more danger because he was already so inebriated that he could not exit the carpark, the short and dispositive point is that he rode while intoxicated when there was no reason for him to do so at all. In short, he rode because he thought he could. His is a classic case calling for the imposition of the DQAC, which is what the District Judge did. As for the length of the disqualification order that was imposed by the District Judge, that was, if anything, on the lenient side.

44 I therefore dismissed Alzate's appeal.

Sundaresh Menon
Chief Justice

Luke Lee Yoon Tet (Luke Lee & Co) for the appellant;
Chong Yong and Chng Luey Chi (Attorney-General's Chambers) for the respondent.