IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 60

Criminal Case No 1 of 2019

Between

Public Prosecutor

And

Mohamed Mubin bin Abdul Rahman

FINDINGS ON REMITTAL

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

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v
Mohamed Mubin bin Abdul Rahman

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Valerie Thean J:

Introduction

1 In Criminal Case 1 of 2019, the accused, Mr Mohamed Mubin bin Abdul Rahman ("Mubin") was jointly tried with his brother, Mr Lokman bin Abdul Rahman ("Lokman"): *Public Prosecutor v Lokman bin Abdul Rahman and another* [2020] SGHC 48 ("*Lokman*").

2 Lokman was arrested with two bundles of granular substances containing not less than 39.28g of diamorphine in his possession on 8 September 2015 at the lift lobby of a condominium where Mubin and another had leased a unit. His explanation was that Mubin had instructed him to take the bundles from the condominium unit, pass one bundle to one "Edy", and return the other to Mubin's residence, a flat at Holland Close. Mubin, who was subsequently arrested on 5 October 2015, maintained in contrast that he had no knowledge of

the drugs in the condominium. He denied giving any instructions to Lokman for the delivery of the bundles. After trial, I rejected Mubin's evidence and accepted Lokman's version of events (see *Lokman* at [80]).

3 Lokman was initially charged under s 5(1)(*a*) read with 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for trafficking two bundles of granular substances containing not less than 39.28 grams of diamorphine. The Court of Appeal's decision in *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 was applicable to Lokman's version of events. Lokman's original charge of trafficking was amended into two charges, one of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA, of either 1 bundle of powdery/granular substance containing not less than 19.88 grams of diamorphine, or 1 bundle of powdery/granular substance containing not less than 19.40 grams of diamorphine, and the other, a new charge for possession under s 8(*a*) of the MDA of either 1 bundle of powdery/granular substance containing not less than 19.88 grams of diamorphine, or 1 bundle of powdery/granular substance containing not less than 19.40 grams of diamorphine (at [76] – [77]). Lokman met the requirements under s 33B(2)(*a*) and (*b*) of the MDA and was sentenced to life imprisonment.

4 Mubin was initially charged for abetting Lokman to traffic the drugs under s 5(1)(*a*) read with s 5(2) and s 12 of the MDA. His charge was also altered into two offences, one for an offence of abetting Lokman to traffic the drugs under s 5(1)(*a*) read with s 5(2) and s 12 of the MDA, of either 1 bundle of powdery/granular substance containing not less than 19.88 grams of diamorphine, or 1 bundle of powdery/granular substance containing not less than 19.40 grams of diamorphine, and a new charge for trafficking under s 5(1)(*a*) of the MDA of either 1 bundle of powdery/granular substance containing not less than 19.88 grams of diamorphine, or 1 bundle of

powdery/granular substance containing not less than 19.40 grams of diamorphine (at [87] – [88]). When I dealt with Mubin's sentence, only s 33B(2) of the MDA arose for consideration at the time as no assertion was made then that Mubin was of unsound mind. Consonant with my factual findings, I held that Mubin was not a courier and the Prosecution did not furnish a Certificate of Substantive Assistance ("CSA") (*Lokman* at [92]). The death penalty was mandatory and I so ordered.

5 Mubin appealed against his conviction and sentence in Criminal Appeal No 7 of 2020 ("CCA 7"). On 26 August 2020, in his Petition of Appeal, Mubin raised for the first time that he had been suffering from such abnormality of mind which substantially impaired his mental responsibility for his actions at the time of the offence. Subsequently, Mubin's new counsel under the Legal Assistance Scheme for Capital Offences, Mr Eugene Thuraisingam ("Mr Thuraisingam"), wrote in on 14 September 2020. Citing the Court of Appeal's observations in *Mohammad Azli bin Mohammad Salleh v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 1374 ("*Azli*"), particularly at [34], and noting that "the issues under the Alternative Sentencing Regime had not been raised and/or canvassed before [me] and that no psychiatric report had been adduced for [Mubin] at the trial below",[1] Mr Thuraisingam requested permission to instruct Dr Jacob Rajesh to assess Mubin. Mr Thuraisingam subsequently requested that the hearing of CCA 7 be adjourned pending the preparation of a psychiatric report on Mubin's alleged abnormality of mind on 16 September 2020.[2] As Dr Rajesh was unable to take on Mubin's case,[3] approval was thereafter granted to engage Dr Ken Ung Eng Khean ("Dr Ung")

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1 Letter by Mr Thuraisingam dated 14 September 2020 at paragraph 4.

2 Letter by Mr Thuraisingam dated 16 September 2020 at paragraph 3.

3 Letter by Mr Thuraisingam dated 20 October 2020 at paragraph 2.

on 21 October 2020. Dr Ung's psychiatric report dated 27 December 2020 was submitted on 25 March 2021. On 1 April 2021, the Court of Appeal directed that the matter "first be remitted to [me] for the evidence on the appellant's alleged abnormality of mind to be heard, and for a determination of whether the appellant satisfies s 33B(3)(*b*) of the MDA".[4]

6 At the remittal hearing, the doctors agreed that Mubin suffered Unspecified Stimulant-Related Disorder and Stimulant Withdrawal. Mr Thuraisingam highlighted that similar arguments on Substance Use Disorder had been advanced before the 5-judge Court of Appeal in *Roszaidi bin Osman v Public Prosecutor* [2022] SGCA 75 ("*Roszaidi*"), on which judgment was reserved. The Prosecution and the Defence were of the view that it would be prudent to wait for the outcome of the Court of Appeal's decision before delivering judgment;[5] I thus reserved judgment pending the decision of the Court of Appeal.

7 After the Court of Appeal delivered its judgment in *Roszaidi*, I considered the subsequent submissions of the Prosecution and the Defence on the impact of *Roszaidi* on the present case. On 13 February 2023, I determined, giving brief oral grounds, that s 33B(3)(*b*) of the MDA was not satisfied in this case. I now furnish my full grounds of decision.

The remittal

8 Mubin bore the burden under s 33B(3)(*b*) of the MDA of establishing the following cumulative requirements on a balance of probabilities

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4 Correspondence from court dated 1 April 2021.

5 NE 19 April 2022 at p 8 ln 20 to p 13 ln 15.

(*Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*") at [21]):

(a) first, that he was suffering from an abnormality of mind;

(b) second, that the abnormality of mind arose from a condition of arrested or retarded development of mind, or arose from any inherent causes, or was induced by disease or injury (otherwise referred to as the aetiology of the abnormality); and

(c) third, that the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to his offence.

The Defence's case

9 The Defence contended that at the time of the offence, Mubin was suffering from the following conditions which resulted in an abnormality of mind: Unspecified Stimulant-Related Disorder (Methamphetamine), Stimulant Withdrawal and Adjustment Disorder.[6]

10 Mubin's defence rested on two reports by Dr Ung dated 27 December 2020 ("Dr Ung's First Report") and 19 November 2021 ("Dr Ung's Supplementary Report") which diagnosed him with the three conditions. Dr Ung's First Report was premised on a consultation with Mubin on 24 November 2020.[7] For the purposes of the psychiatric assessment, Dr Ung was also provided with a forensic report by Dr Jaydip Sarkar ("Dr Sarkar") of the Institute of Mental Health ("IMH") dated 11 December 2015 ("Dr Sarkar's Report"), a medical report by Dr Tan Jian Jing ("Dr Tan") of Changi General Hospital

6 Defence's Closing Submissions dated 5 April 2022 ("DWS") at para 24.

7 AB 14 to 15.

("CGH") dated 13 January 2017, a copy of *Lokman* and court transcripts of Dr Sarkar and Dr Tan's evidence in the prior hearing of Criminal Case 1 of 2019.[8]

11 Dr Ung's conclusion that Mubin was suffering from Adjustment Disorder at the time of the offence was drawn from Mubin's subjective report of the various sources of stress in his life at or around the material time, for which he was prescribed medication by a psychiatrist from CGH.[9] This included stress arising from his aplastic anaemia, being spurned by siblings when he requested they undergo a bone marrow compatibility test, and frequent quarrels with his then-girlfriend, one Tihani binte Ibrahim ("Tihani").

12 At the remittal hearing, Mubin gave evidence regarding the considerable stress that he faced at the time of the offence from three main sources.

13 The first began as early as in 2001, when he was diagnosed with aplastic anaemia, a blood-related disorder.[10] He was greatly concerned with the cost of undergoing a bone marrow transplant,[11] and his stress further compounded when none of his siblings responded to his pleas for them to undergo a bone marrow compatibility test.[12] According to Mubin, this condition affected his daily functioning and ability to concentrate due to feelings of fatigue and mental weakness.[13] This stress, Mubin asserted, was "always there" from the point of diagnosis in 2001 to the point of his arrest.[14]

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8 AB 4, para 8.

9 AB 5, paras 9 to 14.

10 NE 3 February 2022 at p 3 ln 26 to 27.

11 NE 3 February 2022 at p 4 ln 24 to 27.

12 NE 3 February 2022 at p 4 ln 28 to p 5 ln 3.

13 NE 3 February 2022 at p 5 ln 4 to 18.

14 NE 3 February 2022 at p 22 ln 1 to 4.

14 Second, Mubin testified that he faced stress from having to reintegrate to society following his release from the Drug Rehabilitation Centre after serving an imprisonment term from 2009 to 2014, up to the point of his arrest in October 2015. According to Mubin, "everything was taken care of" while he was incarcerated and he did not have to deal with finding accommodation and an income,[15] but he would once again be faced with various stresses "every time [he was] released from prison".[16]

15 Third, Mubin faced stress from frequent quarrels with Tihani, with whom he entered into a relationship with following his release in 2014. Mubin testified that the source of their quarrels was his visits to his ex-wife, Hasina Begum binte Glum Hussin Mullah ("Hasina"), which he did in order to reconcile with her and his children.[17] This stress was exacerbated by the fact these attempts at reconciliation were unsuccessful.[18]

16 The diagnosis of Unspecified Stimulant-Related Disorder arose from Mubin's daily methamphetamine consumption habit. Dr Ung recorded Mubin's account to him that he consumed methamphetamine throughout the day at one to two hourly intervals, and that he could not exceed four to five hours without consumption while awake.[19] The diagnosis of Stimulant Withdrawal arose from Mubin's report that, upon cessation of consumption of methamphetamine, Mubin would feel "weak, moody, agitated and mildly restless".[20]

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15 NE 3 February 2022 at p 21 ln 21 to 27.

16 NE 3 February 2022 at p 35 ln 3 to 11.

17 NE 3 February 2022 at p 7 ln 8 to 12, p 30 ln 28 to p 31 ln 2.

18 NE 3 February 2022 at p 35 ln 3 to 9.

19 AB 7, para 17.

20 AB 8, para 18.

17 Mubin testified that Tihani introduced him to methamphetamine in 2014, and that he began consuming methamphetamine sometime in February 2015 onwards.[21] He stated that his daily consumption rose from 0.5 grams to 5 grams from February to October 2015, and that he consumed methamphetamine due to the aforementioned stresses in his life, and further because it gave him energy to engage in his work as a graphic artist.[22]

18 Based on the above, the Defence submitted that the *Nagaenthran* test was satisfied. In relation to the first limb, the Defence's submission was that the three conditions with which Dr Ung diagnosed Mubin gave rise to an abnormality of mind which affected his ability to exercise self-control.[23] Regarding the second limb, the Defence submitted that Mubin's abnormality of mind arose from disease because the three conditions fell within the prescribed cause of "disease" as they are recognized mental disorders in the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Publishing, 5th Ed, 2013) ("DSM-5").[24] Inherent cause was also present because Mubin's two drug-related disorders had caused damage to his mind.[25] Regarding the third limb of substantial impairment of mental responsibility for his acts in relation to the offence, Mubin's history of chronic substance abuse had impacted his neurocognitive functions, which in turn inhibited his ability exercise self-control and make sound judgments.[26] Dr Ung's opinion was that "[t]he effects on his buying and/or selling of drugs [were] indirect through the need to fuel his

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21 NE 3 February 2022 at p 5 ln 26 to p 6 ln 1.

22 NE 3 February 2022 at p 8 ln 30 to p 9 ln 4.

23 DWS at para 28.

24 DWS at paras 29 to 36.

25 DWS at paras 37 to 39.

26 DWS at paras 44 to 45.

methamphetamine habit".[27] In that sense, because the three conditions were contributory factors to Mubin's decision to use large quantities of methamphetamine, and further because "[t]he net effects of his conditions may have significantly affected his judgment and decision-making processes with respect to his use of methamphetamine",[28] Mubin resorted to trafficking controlled drugs in order to fund his habit.[29]

The Prosecution's case

19 The Prosecution contended that all three limbs of the *Nagaenthran* test were not made out.

20 The Prosecution led expert evidence from Dr Christopher Cheok ("Dr Cheok"), a Senior Consultant in the Department of Forensic Psychiatry of IMH, and adduced a psychiatric report prepared by Dr Cheok dated 30 June 2021 ("Dr Cheok's Report"). Dr Cheok's Report was premised on his examination of Mubin on 2 June 2021 and 11 June 2021 and was framed in reply to Dr Ung's First Report.[30] For the purposes of the report, Dr Cheok also relied on the amended charge sheet of the index offences, the IMH report by Dr Sarkar dated 11 December 2015, Dr Tan's report dated 13 January 2017, IMH medical records of Mubin, a letter from the Attorney-General's Chambers dated 23 April 2021, and *Lokman*.

21 In his report, Dr Cheok disagreed with Dr Ung's diagnosis that Mubin had Adjustment Disorder. Dr Cheok highlighted that Mubin exhibited no

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27 AB 10, para 22.

28 AB 12, para 25.

29 AB 10, para 23.

30 AB 74 to 75, para 3.

impairment of social and occupational functioning, being able to maintain his occupation as a graphic artist and having a regular sex life. The multiple stresses that Mubin reported were, in Dr Cheok's view, "expected and understandable" reactions and did not take Mubin's case out of the norm such as to constitute Adjustment Disorder.[31] Dr Cheok agreed with Dr Ung regarding Unspecified Stimulant-Related Disorder and Stimulant Withdrawal. Regarding Stimulant Withdrawal, however, Dr Cheok opined it was not a mental illness and not induced by disease or injury, but merely a self-induced and transitory state depending on whether methamphetamine was being consumed.[32]

22 The Prosecution's position was that the first limb of the test from *Nagaenthran* was not made out as there was no factual basis to conclude that Mubin suffered from an abnormality of mind at or around the time of the offence.[33] First, Mubin was not suffering from Adjustment Disorder. Second, while the Prosecution agreed that Mubin suffered from Unspecified Stimulant-Related Disorder and Stimulant Withdrawal, this was insufficient to amount to an abnormality of mind. Mubin was able to coordinate a multi-step drug trafficking operation; was lucid and coherent when his statements were taken (to the point of lying upon a realisation of his guilt); and was able to function normally in daily life. Regarding the second limb of the test, the Prosecution relied on Dr Cheok's evidence. First, Mubin did not suffer from Adjustment Disorder. Second, while Unspecified Stimulant-Related Disorder was not transient,[34] it was self-induced. Third, Stimulant Withdrawal was both self-

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31 AB 78 to 79, paras 18 to 21.

32 AB 79, para 25.

33 Prosecution's Written Submissions dated 5 April 2022 ("PWS") at para 14.

34 NE 8 March 2022 at p 11 ln 21 to 26.

induced and transient.[35] Finally, on the third limb, the Prosecution argued that the facts showed that there was no impairment of Mubin's mental responsibility.[36]

Organisation of grounds of decision

23 The essential issue at hand was Mubin's medical condition and its impact. I deal with the Defence's contentions on his condition, before turning to the three limbs of the *Nagaenthran* test.

Mubin's medical condition

Adjustment Disorder

24 Whether Mubin suffered from Adjustment Disorder was in dispute.

Dr Ung's opinion

25 Dr Ung's diagnosis of Adjustment Disorder was based on the following diagnostic criteria in the DSM-5:[37]

> **Adjustment Disorders Diagnostic Criteria**
>
> A. The development of emotional or behavioural symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s).
>
> B. These symptoms or behaviours are clinically significant, as evidenced by one or both of the following:
>
> 1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.

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35 PWS at para 54.

36 PWS at paras 93 to 99.

37 AB 5, para 11.

> 2. Significant impairment in social, occupational, or other important areas of functioning.
>
> C. The stress-related disturbance does not meet the criteria for another mental disorder and is not merely an exacerbation of a pre-existing mental disorder.
>
> D. The symptoms do not represent normal bereavement.
>
> E. Once the stressor or its consequences have terminated, the symptoms do not persist for more than an additional 6 months.

26 Dr Ung opined that Mubin fulfilled Criterion B1 of the Adjustment Disorder Diagnostic Criteria ("Criterion B1"), that the distress shown was out of proportion to the severity or the intensity of the stressor, rather than Criterion B2 of the Adjustment Disorder Diagnostic Criteria ("Criterion B2"), as he was able to "function reasonably well" in daily activities such as work and being able to enjoy leisure activities with others such as Tihani.[38]

27 Dr Ung made several caveats. First, he acknowledged that there was a significant period of time between his interview with Mubin and the time of the offence. As such, there could be issues with accuracy due to memory distortion. Secondly, he acknowledged that some of what he was told by Mubin would have been "afterthoughts of a desperate man, of course, trying to save himself" and that his opinion was predicated on the truthfulness of Mubin's reports. Finally, he reiterated that the assessment of what constitutes significant distress is subjective and rests on the assessor, such that two assessors may reach different conclusions as to whether the threshold of significant distress is reached.[39]

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38 NE 4 February 2022 at p 23 ln 20 to ln 26; AB 5 to 6.

39 NE 4 February 2022 at p 11 ln 24 to p 12 ln 11.

Dr Cheok's opinion

28 Dr Cheok disagreed with Dr Ung's diagnosis because he disagreed that Criterion B1 was fulfilled. Dr Cheok observed that "[g]etting upset after quarrelling with a girlfriend is a normal, expected and understandable reaction", and further that "being stressed after coming out of prison and having to readapt to society" was similarly "expected and understandable".[40] Dr Cheok drew on the fact that Mubin could ably find housing, maintain a relationship and earn a steady income to show that he was able to adapt despite his challenges. For those same reasons, Dr Cheok agreed with Dr Ung that Criterion B2 was not fulfilled.[41]

Analysis

29 I did not find Dr Ung's evidence cogent for the following reasons.

30 First, diagnosis requires a sound factual basis. Dr Ung premised his conclusions on the sole basis of Mubin's own report of his mental state some four or five years prior. Sundaresh Menon CJ observed in *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 ("*De Beers*") at [21] that less weight should be placed on an expert report that is "predicated entirely on the truthfulness of the information the [accused] provided… with no independent information he could rely on in the preparation of the report apart from the narrative the [accused] gave him". Although Dr Ung acknowledged this by including a qualification that the accuracy of his evidence was "predicated on the truthfulness and accuracy of the report given by Mubin",[42] Menon CJ in *De*

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40 AB 78, para 19.

41 AB 78, para 20.

42 AB 4, para 7, 6, para 14, 66, para 5; NE 4 February 2022 at p 11 ln 26 to p 12 ln 11.

Beers makes clear that "[s]imply including a caveat that the report is predicated on the truthfulness of the accused person's account… will not suffice." (at [24]). Dr Ung's views lacked a sound factual substratum.

31 Mubin's evidence in court further reflected that his earlier self-report to Dr Ung regarding his distress was inaccurate, there was insufficient marked distress. I did not agree with the Defence's submission that Mubin's "clear evidence" at trial showed he was under marked distress, satisfying Criterion B1.[43] Criterion B1, as set out at [25] above, is concerned with a person's *reaction,* which must be out of proportion to the severity of the identified stressors. Dr Cheok's report explains:[44]

> … The diagnosis of Adjustment Disorder requires "Marked distress that is out of proportion to the severity or intensity of the stressor" and/or "Significant impairment in social, occupational or other important areas of functioning." *In this respect, the stress and sadness he felt were normal reactions to the situation and not marked nor out of proportion.* There was no impairment of social and occupational functioning. The emotional symptoms he felt as well as the poor sleep can also be caused by methamphetamine use which is known to cause anxiety, tension, anger and insomnia.
>
> [emphasis added]

32 Mubin's testimony did not reflect the necessary disproportionate response:[45]

> Q And these quarrels, they made you---how did they make you feel?
>
> A Your Honour, *I felt frustrated* and at the same time stressed, Your Honour, because this matter keep on bugging me, Your Honour. *As such, I feel quite restless, Your Honour.*

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43 DWS at p 10 to 12, para 23.

44 AB 79, para 21.

45 NE 3 February 2022 at p 7 ln 24 to p 8 ln 26.

> …
>
> Q Okay, so these stressful things, can you describe for Her Honour how stressful they were?
>
> A Your Honour, at times, Your Honour, I think to myself, Your Honour, why is my life like this, Your Honour. Your Honour, at times I couldn't figure out what to do with my life, Your Honour. Your Honour, I have no place to go, no one to turn to, I don't have any parents, Your Honour, and my relationship with my siblings has a problem, Your Honour, because they deserted me because of the bone marrow issue, Your Honour. As such, *Your Honour, all this thing bothers me, Your Honour. All I can do is to have patience with my life, Your Honour.*
>
> [emphasis added]

33 In his First Report, Dr Ung placed emphasis on how "marked distress" was subjective, allowing him to place reliance on a person's self-report. He did not explain how Mubin's self-reported stress crossed into the threshold of marked distress, stating generically:[46]

> The chronic nature of his stress with respect to his aplastic anaemia and its sequelae (tiredness) as well as the relationship stresses with his girlfriend would be consistent to the development of an adjustment disorder (when his coping reserves become exhausted) *at some point.*
>
> [emphasis added]

There was no specificity in the time of onset of the adjustment disorder or how it was concluded that these factors led to the marked distress that was the subject of the paragraph.

34 When cross-examined, Dr Ung relied on Mubin's substance abuse in response to stress as an example of a disproportionate response. The logical

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[46] AB 6, para 14.

nexus of this assertion was not established; the following revealed that Dr Ung's assertion was in the nature of an assumption:[47]

> Yah. So I mean, you know, as you said, you know, anybody---most people would feel stress when they quarrel with their girlfriend and, you know, they deal with it. However, *if the, you know, you quarrel with your girlfriend and you start to take illegal drugs, then that might be considered, you know, a disproportionate response.*
>
> …
>
> So what I'm trying to say is that, you know, I mean I presume the quarrels have been going on but---and he had been dealing with it. He had been not lapsing back. *However, it got to the stage where he then felt unable to then control himself or---because of the level of distress and then to self-medicate by taking his methamphetamine, then that would be a possible example of a disproportionate response*. Now, when I said that he told me that he took methamphetamine to alleviate his physical state, I believe again from memory he also did say that he took methamphetamine to also alleviate his mental distress.
>
> [emphasis added]

35 Dr Cheok, to the contrary, was of the view that Mubin used drugs as a habitual way of dealing with stress, explaining:[48]

> … when a person quarrels with their partner, it is not surprising if someone feels stressed, yah, and unless the stress is so extreme, we wouldn't---we will say that this is a normal, expected reaction to that particular incident, yah. For someone to consume drugs, especially with a background, given the accused's history of repeated drug use, this is actually not surprising, because he---this is his *habitual way of dealing with stressful situations*, to consume substances….
>
> … disproportionate response, for example, we see this type of situation in our emergency rooms every day, not just at I---I mean, at IMH or in our clinical work. When someone is very, very stressed, the person may attempt self-harm, may cut themselves, or some people even lose their ability to move their limbs for a short period of time. Some---some people start going into a dazed state, and they can't communicate. So some of

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47 NE 4 February 2022 at p 18 ln 15 to p 19 ln 11.

48 NE 8 March 2022 at p 13 ln 21 to p 14 ln 23.

> these reactions would be, you know, a reaction out of keeping and disproportionate to the stressor. But to merely feel stressed after a quarrel with your partner, I think this is part of our everyday, normal human experience.
>
> [emphasis added]

36 Mubin himself identified various reasons for his use of methamphetamine, not simply to cope with stress, but also to relax, to focus on his work,[49] and to improve his sexual prowess.[50] For example, he explained in cross-examination:[51]

> Q Thank you. So you mentioned Tihani introduced you to methamphetamine and you started consuming methamphetamine. How does consuming methamphetamine make you feel?
>
> A Your Honour, taking methamphetamine caused me to be relaxed, Your Honour, and at the same time, energetic as well, Your Honour. Thus, enabling me to do work, Your Honour, because at that point of time, I was working, Your Honour.
>
> Q Okay, so you said it gives you energy to work?
>
> A Your Honour, because as I explained earlier, I was feeling fatigued and weak at that point of time, Your Honour. By taking Ice, it gave me energy, Your Honour.
>
> Q Why were you feeling fatigued and tired?
>
> A Your Honour, because of my illness, Your Honour.

37 This was consistent with what he reported to Dr Sarkar after his arrest, and recorded by Dr Sarkar's report:

> He has been taking methamphetamine for the past few months as it reportedly helps give him 'energy' as he otherwise feels fatigued and tired due to his blood disorder. It also helps him 'concentrate'.

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49 NE 3 February 2022 at p 10 ln 29 to 32.

50 NE 3 February 2022 at p 25 ln 2 to 4.

51 NE 3 February 2022 at p 8 ln 27 to p 9 ln 6.

38 Mubin's evidence and prior stance was therefore more consonant with Dr Cheok's suggestion that his methamphetamine use was a habitual way of easing work and life.

39 A second concern with Dr Ung's diagnosis, related to his using Mubin as his sole source, is that it relied on various important but erroneous assumptions:

(a) In Dr Ung's Supplementary Report, Dr Ung relied on the fact that Mubin was prescribed medication by a psychiatrist in CGH to rebut Dr Cheok's Report.[52] As mentioned earlier, Dr Ung confirmed in cross-examination that he had assumed that this prescription was given some time in 2015.[53] However, Mubin had in fact obtained the prescription about *11 years prior, in 2004*.[54]

(b) Dr Ung had made similar assumptions regarding the timeframe in which Mubin's stress arose from being spurned by his siblings following his request for a bone marrow transplant. Dr Ung revealed in cross-examination his belief that this stressor occurred sometime in 2015.[55] However, it was clear from Mubin's evidence that this had, in fact, occurred sometime between 2001 to 2004 instead.[56] Ostensibly making reference to Criterion A of the Adjustment Disorder Diagnostic Criteria, *ie*, that the subject's symptoms had to develop in response to an identifiable stressor *within three months* of the onset of the stressor,

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52 AB 66, para 5.

53 NE 4 February 2022 at p 12, ln 29 to p 13, ln 1.

54 NE 3 February 2022 at p 20, ln 2 to 5.

55 NE 4 February 2022 at p 22, ln 5 to 31.

56 NE 4 February 2022 at p 22, ln 25 to 31.

Dr Ung accepted that *the significant time lapse of up to 14 years* between Mubin's disappointment with his siblings and the time of the offence meant that this stressor would not have been a major factor.[57] His explanation of the nature of Adjustment Disorder confirmed this:[58]

> A: … I certainly wouldn't expect an adjustment disorder to last for---
>
> Q: 11 years.
>
> A: ---15 years.
>
> Q: Yes.
>
> A: Adjustment disorder as what Dr Chris Cheok has included in his report which I agree with of course. The---a criteria is set out in the DSM-V is that it is a response to external stressors which comes, you know, within as what has been stipulated, you know, a short period of time. So if the stress is then removed, we would not expect the condition to persist. However, in certain cases where the stress is chronic, then you might get a kind of more chronic adjustment disorder.

(c) Dr Ung assumed that Mubin was stressed by his discord with Tihani. In fact, Mubin was trying to rebuild his relationship with his former wife, Hasina.[59] Dr Ung conceded during cross-examination that, had he grasped the full picture, he could have formed a different conclusion:[60]

> Q: And if you had been presented with Mr Mubin's version which he gave at this trial that he was in the process --- that he had problems with Tihani, she had left --- she had asked Mubin to let her go, he was in the process of building his ---

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57 NE 4 February 2022 at p 22, ln 25 to 31 and p 23, ln 1 to 15.

58 NE 4 February 2022 at p 16 ln 18 to 29.

59 NE 4 February 2022 at p 20, ln 21 to 31.

60 NE 4 February 2022 at p 21, ln 7 to 20.

> rebuilding his relationship with his ex-wife who was staying with him, right, if he had presented with all these facts, you may not have come to the same conclusion that he faced marked distress from his relationship with his girlfriend?
>
> A: Yes, I mean if, you know, sort of during the material time in question when he relapsed back into stimulant use again if --- as what you state, you know, that he --- his relationship with his ex-wife had been on the mend and you know, he had been, in a way reconciling and you know, they were having a decent relationship, then yes, you know, it would alter --- likely alter on of --- I mean, *it would remove that factor about the relationship stress as a factor in adjustment disorder.*
>
> [emphasis added].

40 In summary, Dr Ung's assessment suffered from an inappropriate reliance on Mubin's self-report, which Mubin's evidence in court did not support, erroneous assumptions, and weak analysis. Cross-examination revealed that his reports lacked any credibility. Dr Ung himself accepted that his report was not reliable:[61]

> Q: Right. And would you agree that given that how the different factors – now that you've seen how the different factors have played out, there was no psychiatrist seen in 2005, he's told you half-truth about his relationships with his girlfriend and wife – ex-wife, the timeframe of the bone marrow transplant and the stress he faced from his relatives, now if you consider all these factors now, would you say that it is less likely or impossible that he did not even suffer from any adjustment disorder in September 2015?
>
> A: Yes, I've said that that, you know, with, I guess, you know, the information that I've been provided, then yes, it will be less likely than I had originally surmised. Well, as you said, *perhaps even possibly no.*
>
> [emphasis added]

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61 NE 4 February 2022 at p 25 ln 18 to 27.

After Dr Ung made the above concessions, defence counsel did not cross-examine or seriously challenge Dr Cheok on his opinion that Mubin did not suffer from Adjustment Disorder when he took the stand on 8 March 2022.[62]

Unspecified Stimulant-Related Disorder and Stimulant Withdrawal

41 There was no dispute that Mubin was suffering from Unspecified Stimulant-Related Disorder and Stimulant Withdrawal at or around the material time.

Conclusion on clinical conditions

42 I therefore proceeded with the *Nagaenthran* test on the following basis:

(a) Mubin did not suffer from Adjustment Disorder at the time of the offence.

(b) Mubin did suffer from Unspecified Stimulant-Related Disorder and Stimulant Withdrawal at the time of the offence.

43 While Mubin did not concede that he did not suffer from Adjustment Disorder, his alternative argument was that the Unspecified Stimulant-Related Disorder and Stimulant Withdrawal were sufficient to fulfil the requirements of the *Nagaenthran* test.

Abnormality of mind

44 The first limb of the *Nagaenthran* test is a matter for the trier of fact: *Nagaenthran* at [22]. The definition of abnormality of mind enumerated by Lord Parker CJ in the English Court of Criminal Appeal decision of *Regina v Byrne*

62 NE 8 March 2022 at p 32 ln 4 to p 33 ln 11.

[1960] 2 QB 396 ("*Byrne*") (at 403) was adopted by the Court of Appeal in *Iskandar bin Rahmat v Public Prosecutor* [2017] 1 SLR 505 ("*Iskandar*") at [81] and *Nagaenthran* at [23]:

> 'Abnormality of mind,' … means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise the will power to control physical acts in accordance with that rational judgment.

45 When examining whether the accused was suffering from an "abnormality of mind", the court may consider whether the accused had an abnormally reduced mental capacity to (a) understand events; (b) judge the rightness or wrongness of one's actions; or (c) exercise self-control: *Iskandar* at [82]. *Nagaenthran* further made clear (at [25]) that these are not exhaustive factors but a helpful guide to the inquiry and are likely to be the most relevant and often used tools. A verdict that there is an abnormality of mind must be founded on all the evidence available, including medical opinion: *Nagaenthran* at [28]. Thus, the surrounding circumstances of the case, including the accused's conduct prior to, during and after the offence, will be relevant: *Nagaenthran* at [29].

46 In the present case, I have found that Mubin did not suffer from Adjustment Disorder. The Defence's position was that, even aside from that disorder, Mubin's Unspecified Stimulant-Related Disorder and Stimulant Withdrawal gave rise to an abnormality of mind. In this regard, the Defence argued that these conditions affected Mubin's ability to exercise self-control under the *Byrne* definition as Mubin's drug consumption habit led to a reduced ability to exercise his willpower to resist the consumption of

methamphetamine.[63] Flowing from this, it was asserted that Mubin's chronic drug use caused harm to the brain and neurocognitive processes, which in turn resulted in deficits in attention, impulse control and decision-making over the general decisions in Mubin's life.[64] The expert evidence thus played a significant role in the Defence assertions, and I first explain my views on the expert evidence.

Expert evidence

47 Dr Ung's First Report explained Stimulant Use Disorder and Unspecified Stimulant-Related Disorder as follows:

> **Stimulant Use Disorder Diagnostic Criteria**
>
> A. A pattern of amphetamine-type substance, cocaine, or other stimulant use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:
>
> **1. The stimulant is often taken in larger amounts or over a longer period than was intended.**
>
> 2. There is a persistent desire or **unsuccessful efforts to cut down or control stimulant use.**
>
> 3. **A great deal of time is spent** in activities necessary to obtain the stimulant, **use the stimulant, or recover from its effects**.
>
> 4. **Craving, or a strong desire or urge to use the stimulant**.
>
> …
>
> 10. **Tolerance, as defined by either of the following:**
>
> **a. A need for markedly increased amounts of the stimulant to achieve intoxication or desired effect.**

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63 DWS at para 26.

64 DWS at paras 27 and 28.

> **b. A markedly diminished effect with continued use of the same amount of the stimulant.**
>
> …
>
> 11. **Withdrawal, as manifested by either of the following**:
>
> a. **The characteristic withdrawal syndrome for the stimulant** (refer to Criteria A and B of the criteria set for stimulant withdrawal, p. 569).
>
> b. **The stimulant (or a closely related substance) is taken to relieve or avoid withdrawal symptoms.**
>
> **Specify current severity:**
>
> Mild: Presence of 2-3 symptoms
>
> Moderate: Presence of 4-5 symptoms
>
> **Severe: Presence of 6 or more symptoms**
>
> …
>
> **Unspecified Stimulant-Related Disorder**
>
> **This category applies to presentations in which symptoms characteristic of a stimulant related disorder that cause clinically significant distress or impairment in social, occupational or other important areas of functioning predominate but do not meet the full criteria for any specific stimulant-related disorder** or any of the disorders in the substance-related and addictive disorders diagnostic class.
>
> [emphasis in original]

48 Dr Ung identified that Criterion A1, A2, A3, A4, A10 and A11 (in bold) of the Stimulant-Related Disorder diagnostic criteria were satisfied because of Mubin's report as to his daily consumption of methamphetamine around the time of his arrest being about 5 grams daily, and that he consumed methamphetamine to relieve stress and to give him more energy in light of the fatigue that his aplastic anaemia brought. Further, Mubin reported to Dr Ung that he would consume methamphetamine once he woke up, and would continue

throughout the day, usually in one or two hour intervals, and could not exceed four to five hours without consuming the drug while awake.

49 Comparing Mubin's condition to Stimulant Use Disorder, Mubin's stimulant use spanned about eight months from February 2015 to October 2015. Dr Ung concurred with Dr Sarkar that the 12-month period prescribed in Criterion A for Stimulant Use Disorder was not satisfied.[65] Mubin was therefore diagnosed with Unspecified Stimulant-Related Disorder as he did not meet the "full criteria for any specific stimulant-related disorder". [66] Dr Cheok agreed that Unspecified Stimulant-Related Disorder was akin to Stimulant-Related Disorder; if it persisted, the diagnosis would then become Stimulant Use Disorder.[67]

50 In relation to Mubin's Stimulant Withdrawal, this arose due to Mubin's reported symptoms after ceasing methamphetamine consumption, with Dr Ung's First Report reflecting that Mubin felt "weak, moody, agitated and mildly restless" as a result.[68] The relevant portions of the Stimulant Withdrawal diagnostic criteria as cited in Dr Ung's First Report are as follows:

> **Stimulant Withdrawal**
>
> **A. Cessation of (or reduction in) prolonged amphetamine-type substance, cocaine, or other stimulant use.**
>
> B. **Dysphoric mood and two** (or more) of the following physiological changes, developing within a few hours to several days after Criterion A:
>
> **1. Fatigue.**
>
> 2. Vivid, unpleasant dreams

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65 AB 6, para 15.

66 AB 7, para 16.

67 NE 8 March 2022 at p 17 ln 18 to ln 29.

68 AB 8, para 18.

> 3. Insomnia or hypersomnia.
>
> 4. Increased appetite
>
> **5.** Psychomotor retardation or **agitation.**
>
> C. **The signs or symptoms in Criterion B cause clinically significant distress** or impairment in social, occupational, or other important areas of functioning.
>
> D. The signs or symptoms are not attributable to another medical condition and are not better explained by another mental disorder, including intoxication or withdrawal from another substance.
>
> [emphasis in original]

The requirements Dr Ung found satisfied are highlighted in bold, that Stimulant Withdrawal arose upon cessation of stimulant use (Criterion A), that Mubin suffered dysphoric mood and fatigue and agitation (Criterion B), and that the symptoms in Criterion B caused clinically significant distress (Criterion C).

51 Dr Cheok's Report indicated its agreement with Dr Ung's assessment that Mubin had suffered from Unspecified Stimulant-Related Disorder and Stimulant Withdrawal.[69]

52 The Defence's contention was that the drug-related disorders affected Mubin's ability to exercise self-control in his general decision-making processes: "[t]he focal point is that harm has been caused to the brain and neurocognitive process as a result of chronic drug use".[70] The argument was premised on Dr Ung's First Report. In particular, the Defence focused on Dr Ung's statement in the First Report which stated that Mubin's necessity to fund his stimulant use would have resulted in him resorting to transacting in drugs:

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69 AB 77, paras 16 to 17.

70 DWS at para 27.

> 25. His Adjustment Disorder, Unspecified Stimulant-Related Disorder and Stimulant Withdrawal are significant contributory factors in his decision to continue to use large quantities of methamphetamine. The necessity to finance such use resulted in resorting to transactions of drugs to fund his stimulant use. The net effects of his conditions may have significantly affected his judgment and decision-making processes with respect to his use of methamphetamine and efforts to fund this.

53 However, when the text above was read in its wider context, it became clear that Dr Ung's assessment did not support the Defence's case. Rather, Dr Ung acknowledged that Mubin would have been able to exercise self-control in his general decision-making processes. Before and after the text above was the following:[71]

> 23. … With respect to chronic amphetamine drug abuse on the brain and neuro-cognitive processes, deficits in attention, impulse control and decision making have been reported. *It should be pointed out that these deficits are not likely to be gross (insufficient to interfere with his planning and executing the buying and selling of drugs* or causing significant impairment to his ability to work from home as a graphic artist). The deficits are *more specifically related to his decision making with regards to continuing his abuse of methamphetamine and his difficulties in stopping its use.*
>
> …
>
> 26. *Although he would have been aware of the rightness and wrongness and risks of transacting in drugs*, when a user is desperate to relieve their withdrawal and alleviate negative physical and psychological symptoms, cognitive processes in the brain would be directed towards obtaining further quantities… *although he would be capable of cognitively processing such risks if he were to actively think of it for any length of time*, the overwhelming need to quickly alleviate his physical and psychological distress would have "hijacked" his cognitions towards this end making it more difficult for him to attend to and process risks and consequences properly.
>
> [emphasis added]

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[71] AB 10, para 23 and 12, para 26.

54 Thus, Dr Ung's assessment did not support the Defence's case because his view was focused on the general reactions of "a user". Specific to Mubin, Dr Ung's view was that the deficits were unlikely to be gross and that Mubin would be capable of processing risks if he were to actively think about it for any length of time.

55 Dr Cheok's evidence confirmed this. When queried about how Unspecified Stimulant-Related Disorder could affect the brain, Dr Cheok stated that he did not know whether there was injury of the mind in this specific case, because the methamphetamine consumption in the present case was recent and different drugs have a different impact on the brain. Mubin was introduced to methamphetamine in 2014 by Tihani (see [17]). Mubin had a history of drug use, although he was inconsistent in his account of the initial years. To Dr Sarkar, he reported that he started smoking cannabis at 17 and heroin a couple of years later.[72] For Dr Cheok, he reported that he started smoking cannabis recreationally when he was 12, and then heroin while in secondary school.[73] Dr Cheok said in cross-examination that Mubin's prior heroin use could "possibly" have an impact on his brain, but disagreed that it was "likely" because Mubin had spent "a good part of his adult life" in DRC or on long term sentences. There were therefore long periods of time when Mubin would have had no access to drugs.[74] Mubin's prison record showed that between 1977 to 2014, any periods outside of regulated regimes such as the Drug Rehabilitation Centre, Reformative Training Centre, Work Relief Scheme Camp and prison were less

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72 AB 145, para 7.

73 AB 76, para 9.

74 NE 8 March 2022, p 20 ln 25, p 31 ln 1-6; NE 3 February 2022, p 23 ln 26 - ln 30.

than a calendar year.[75] From 1998 to 2014, Mubin served three long term sentences in prison for heroin.

56 What about Mubin's Stimulant Withdrawal? Here, the evidence that it could give rise to an abnormal state of mind was weaker still. Mubin's evidence at trial was that upon cessation of methamphetamine consumption, he would "feel weak straightaway".[76] In turn, Dr Ung's First Report records that Mubin would feel "weak, moody, agitated and mildly restless" upon cessation of methamphetamine consumption.[77] Dr Cheok was of the view that Stimulant Withdrawal is not a mental illness but merely referred to a mental state following usage of methamphetamine.[78] These withdrawal symptoms would also typically "resolve by itself within hours or maybe 1 to 2 days… without any medical intervention required".[79] As to how this withdrawal symptoms manifested in Mubin, Dr Cheok stated that Mubin "*may* have [had] *mild* withdrawal symptoms" [emphasis added] when he woke up from sleeping, and that Mubin's withdrawal symptom was fatigue.[80] These sensations did not speak to a state of mind said to be so different from ordinary standards to be regarded as abnormal by the reasonable man.

57 The medical evidence, therefore, was weak, especially when considered in the light of the surrounding circumstances, which I now explain.

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75 AB 257.

76 NE 3 February 2022 at p 10 ln 21 to 24.

77 AB 8, para 18.

78 AB 79, para 25.

79 NE 8 March 2022 at p 12 ln 10 – 16.

80 AB 76, para 10.

The surrounding circumstances

58 Mubin was able to earn a monthly salary from freelance artistry,[81] was actively engaged in repairing his familial relationships,[82] and had an active sex life with Tihani.[83] This revealed that Mubin had the ability to understand events, and to exercise some degree of general self-control.

59 Mubin testified that he was unable to focus when he *redistributed or sold* Ice or heroin. When asked to explain what he meant when he said he was unable to control himself in respect of the trafficking of ice or heroin, Mubin said:[84]

> Your Honour, what I'm saying is *when it comes to thinking about selling or redistributing, I can't think or focus on that*, Your Honour. All I was focused on that---at that point of time was on my physical well-being on---and on how to alleviate the weakness that's---that I'm suffering or feeling, Your Honour, at that point of time.
>
> [emphasis added]

60 The facts belie his assertion of inability to focus. In the lead up to the offence, Mubin was able to coordinate the receipt of the drugs from one Mohd Zaini bin Zainutdin and Mohd Noor bin Ismail, and thereafter able to give Lokman clear instructions on the specific locations, recipients and timings for the delivery of the drugs (see *Lokman*, at [66]). These arrangements involved Mubin liaising with his suppliers, storing the drugs at the condominium unit, and acting as the middleman between his customer, Edy, and his courier,

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81 Record of Proceedings ("ROP") vol 2B, 2D3 at para 4; NE 3 February 2022 at p 11 ln 12.

82 NE 3 February 2022 at p 30, ln 28 to 32.

83 NE 3 February 2022 at p 6 ln 1 to 8; at p 7 ln 15 to 20.

84 NE 3 February 2022 at p 19 ln 3 to 9.

Lokman. After Lokman's arrest on the night of 5 September 2015, Mubin made several phone calls to Lokman and Edy in order to ascertain Lokman's whereabouts and to understand why the prior arrangement had fallen through. He castigated Lokman for failing to execute the delivery in a phone call at 2.42 am the next day, alluding to the risk of the drug transaction being detected:[85]

> (a) At S/N 13: "Do you understand? If you had followed my instruction, if you had gone there, 'pap', you come to my place [inaudible], [one bundle of drugs] would have safely been delivered."
>
> (a) At S/N 21: "… I'm concerned about your safety, duh, waiting for stuff in the middle of the night [inaudible]. We don't know what's going on. You didn't want to answer our calls [inaudible]."
>
> (b) At S/N 26: "I want to cover your safety and all. In the middle of the night you want to deliver [the drugs]. I'm telling you that if you had done it during the day, there won't be any problems you know."

61 In sum, Mubin planned and organised a complex operation with various moving parts. Mubin remained aware of the details of the drug transaction. Contrary to his case, he was able to focus on selling and redistributing the Ice and heroin. The evidence did not reflect the workings of an injured brain that was able only to make decisions from the perspective of an overwhelming need to consume drugs.

Conclusion on abnormality of mind

62 In *Roszaidi*, abnormality of mind was not in issue because Dr Bharat Saluja and Dr Jacob Rajesh, the two experts in that case, agreed that both

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[85] ROP vol 2 at pp 609 to 611.

Roszaidi's Major Depressive Disorder and mental and behavioural disorder due to dependence of multiple substances ("Substance Use Disorder") were recognised mental disorders. The Prosecution and the Defence experts there agreed that both conditions were abnormalities of mind and satisfied the first limb of *Nagaenthran*: see *Public Prosecutor v Roszaidi bin Osman* [2021] SGHC 22 at [7]. In the present case, while Dr Cheok appeared to accept that Unspecified Stimulant-Related Disorder was akin to Stimulant Use Disorder although Stimulant Use Disorder was suffered over a longer period of time,[86] there was no agreement from the Prosecution that Unspecified Stimulant-Related Disorder amounted to an abnormality of mind. Whether there was abnormality remained in the present case a fact-specific exercise to be proven on the facts. For Mubin, the medical evidence was weak and there was no evidence from his behaviour or conduct to indicate that his mental state was abnormal in any way. In contrast to Roszaidi, Mubin's routine and interests indicated that drug consumption was not the consuming focus of Mubin's life. On the facts before me, I was of the view that Mubin had the capacity to understand events, judge the rightness and wrongfulness of his actions, and to exercise self-control. There was no abnormality of mind.

Aetiology

63 Following from my conclusion that Mubin was not suffering from an abnormality of mind, that there was no need for me to consider the second and third limbs of the *Nagaenthran* test. I address these briefly.

64 The Defence's contention regarding the second limb was that the stimulant disorder was a disease, or that Mubin's continual consumption

[86] NE 8 March 2022 at p 17 ln 18 to ln 29.

permanently altered his mind, resulting in an inherent cause. In *Roszaidi*, the second limb was fulfilled because it was accepted that the Major Depressive Disorder arose from an inherent cause (see [61], *Roszaidi*) and the Major Depressive Disorder and Substance Use Disorder operated synergistically, such that the Major Depressive Disorder formed the underlying substrate for his Substance Use Disorder. This accounted for the intensity at which his Substance Use Disorder operated at the time of the offence (see [78] and [183] of *Roszaidi*).

65 The short answer to the Defence's contention was that *Roszaidi* makes clear at [58] that the position in *Nagaenthran* at [31] remains the law. The exception does not apply to self-induced or transient conditions. Both of the agreed medical conditions were self-induced; further, Stimulant Withdrawal was transient.

66 Mr Thuraisingam argued that the effect of Substance Use Disorder acting alone was left open in *Roszaidi* at [81] to "an appropriate future case". The Court of Appeal also referred in that paragraph to extracts in Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Singapore* (paras 25.47 – 25.48 and 26.35 – 26.38) on self-induced intoxication and brain injury arising therefrom. In this context, Dr Cheok did not question the Defence's assumption that Stimulant Use Disorder was akin to Substance Use Disorder and that Unspecified Stimulant-Related Disorder was akin to Stimulant Use Disorder.[87] Notwithstanding, reading the *Roszaidi* judgment as a whole, it is clear that the present case would not be an appropriate one. In *Roszaidi*, the Major Depressive Disorder as an underlying substrate and the synergistic operation of Major Depressive Disorder and Substance Use Disorder were crucial. Further, the

[87] NE 4 February 2022 p 4 ln 8-10; NE 8 March 2022 at p 17 ln 18 to ln 29.

remarks on Substance Use Disorder at [81], which must be read consistently with the prefacing remarks on self-induced conditions at [58], were made in the context of an accepted intensity of Substance Use Disorder (see [78] of *Roszaidi*) such that there was an abnormality of mind. In the present case, there was insufficient evidence of brain injury: see [54] – [55] above.

Mental responsibility

67 Regarding the third limb of the *Nagaenthran* test, it follows from my finding that there is no abnormality of mind that the issue of mental responsibility does not arise. The facts showed no functional impairment. *Roszaidi*, on the other hand (at [197]), requires that there be a real and material effect on the ability to exercise control over actions. Dr Ung conceded in cross-examination that Mubin's engagement with the offence in question was a result of his "poor choices".[88] Parliamentary intention behind the alternative sentencing regime in s 33B(3)(*b*) of the MDA is apt to this situation: "[g]enuine cases of mental disability are recognised, while, *errors of judgment* will *not* afford a defence" [emphasis added] (Minister for Law K Shanmugam, *Singapore Parliamentary Debates, Official Reports* (14 November 2012) vol 89).

[88] NE 4 February 2022 at p 36 ln 16.

Conclusion

68 Accordingly, I determined that s 33B(3)(*b*) of the MDA was not satisfied.

Valerie Thean
Judge of the High Court

April Phang and Kenny Yang (Attorney-General's Chambers) for the Public Prosecutor;
Eugene Thuraisingam, Johannes Hadi (Eugene Thuraisingam LLP), and Mohamed Fazal bin Abdul Hamid (IRB Law LLP) for the Accused.