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

[2024] SGHC 4

Magistrate's Appeal No 9024 of 2020

Between

Michael Marcus Liew

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9025 of 2020

Between

Cheo Lye Choon

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9026 of 2020

Between

Tok Meng Chong

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9027 of 2020

Between

Ng Wan Seng

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9028 of 2020

Between

Chan Hui Yi Regina

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Offences — Section 147 of the Penal Code (Cap 224, 2008 Rev Ed)]

[Criminal Law — Offences — Unlawful assembly — Common object]
[Criminal Procedure and Sentencing — Appeal]
[Criminal Procedure and Sentencing — Sentencing]

TABLE OF CONTENTS

Liew Michael Marcus
v
Public Prosecutor and other appeals

[2024] SGHC 4

General Division of the High Court — Magistrate's Appeals Nos 9024, 9025, 9026, 9027 and 9028 of 2020
Vincent Hoong J
19 July, 15, 23 November 2023

11 January 2024

Vincent Hoong J:

Introduction

1 In a case where there was a series of physical assaults involving a number of perpetrators and a number of victims, but not all the perpetrators were involved in assaulting each victim, what is the evidence required before a finding can be made that there was a common object among the perpetrators to voluntarily cause hurt to *all* the victims? This was the key question I had to consider in the present case.

2 The five appellants met at a bar on the evening of 30 April 2017. The four victims were also at the same bar then. Following an evening of drinking, the five appellants and the four victims left the bar separately in the early hours of 1 May 2017.

3 Subsequently, at an open carpark near the bar, three incidents of violence took place. None of these incidents involved an attack by *all* five appellants on *all* four victims. Rather, as I set out at [18]–[30] below, each victim was attacked at a different point of time and each victim was not attacked by all the appellants.

4 Despite the above, the Prosecution preferred a charge under s 147 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") against each appellant for being a member of an unlawful assembly whose common object was to cause hurt to all four victims.

5 The appellants claimed trial to their corresponding charge under s 147 of the Penal Code in the court below. At the conclusion of the trial, the appellants were each found guilty and convicted of a charge under s 147 of the Penal Code. Thereafter, the District Judge (the "DJ") sentenced the appellants to imprisonment terms ranging between 12 months and 18 months. The appellants filed appeals challenging their convictions and sentences.

6 While various arguments had been canvassed in the course of the appeal, one argument, in my view, was critical in deciding this appeal. Given the manner in which the Prosecution had framed the charge against the appellants, the Prosecution needed to show that the appellants possessed a *common object* to voluntarily cause hurt to all four victims. The appellants argued that the Prosecution had failed to adduce sufficient evidence to satisfy its burden of proving such a common object beyond reasonable doubt. The Prosecution, on the other hand, submitted that sufficient evidence had been adduced in the court below to show that the three incidents of violence were closely linked and that the appellants had possessed a common object.

7 Having considered the parties' submissions, I allowed the appellants' appeal against conviction in relation to each of their charges under s 147 of the Penal Code. The appellants' convictions and sentences in relation to the charge under s 147 of the Penal Code were set aside, and the appellants were acquitted of their respective charge under s 147 of the Penal Code.

8 I then invited the parties to submit on whether altered charges could be framed against the appellants based on the facts proven in the court below, as allowed for under s 390(4) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"). Having considered the parties' submissions on this point, I framed altered charges under s 323 of the Penal Code and s 323 read with s 34 of the Penal Code against the appellants based on their respective involvement in the hurt caused to the four victims. The specific charges which I framed against each appellant can be found at [114]–[127] below. I then invited the parties to submit on the appropriate sentences to be imposed in relation to the altered charges. The appellants sought fines, while the Prosecution sought short custodial sentences. Ultimately, I decided that fines were appropriate given the minor nature of the injuries sustained by the victims.

9 For completeness, two of the appellants also appealed against the custodial sentences imposed on charges which they had pleaded guilty to in the court below. I dismissed these appeals as the sentences were not manifestly excessive.

10 I set out the detailed grounds of my decision below, incorporating the oral remarks which I delivered at the hearings for this appeal.

Facts

The parties

11 The five appellants (collectively, the "Appellants") were:

(a) Mr Michael Marcus Liew ("Michael");

(b) Mr Cheo Lye Choon ("Lye Choon");

(c) Mr Tok Meng Chong ("Meng Chong");

(d) Mr Ng Wan Seng ("Wan Seng"); and

(e) Ms Chan Hui Yi Regina ("Regina").

12 Michael, Lye Choon, Meng Chong and Wan Seng were friends from school. Regina was Wan Seng's girlfriend at the material time. The Appellants met at a bar at Tebing Lane, Frienzie Bar and Bistro (the "Bar"), for drinks on the evening of 30 April 2017.[1]

13 The victims (collectively, the "Victims") were:

(a) Ms Maureen Baricautro Mamucod ("Maureen");

(b) Mr G K Karunan George ("George"), who is Maureen's husband;

(c) Mr K Amuthan Daniel ("Daniel"), who is George's brother; and

(d) Ms Sreelatha Thankamaniamma ("Sreelatha"), who is Daniel's wife.

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[1] Record of Proceedings ("ROP") at p 860: *Public Prosecutor v Michael Marcus Liew and others* [2020] SGDC 104 ("the DJ's GD") at [2].

14 On the evening of 30 April 2017, the Victims were also at the Bar for a meal and to watch a televised football match.[2]

The charge under s 147 of the Penal Code preferred against each Appellant

15 I set out below the charge under s 147 of the Penal Code preferred against Michael:[3]

> You, **MICHAEL MARCUS LIEW**, …
>
> are charged that you, on 1 May 2017 at or around 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, together with Tok Meng Chong, Cheo Lye Choon, Ng Wan Seng and Chan Hui Yi, Regina, were members of an unlawful assembly whose common object was to voluntarily cause hurt to G K Karunan George and Maureen Baricautro Mamucod, K Amuthan Daniel and Sreelatha Thankamaniamma, and in the prosecution of the common object of such assembly, one or more of you did use violence, *to wit*, by hitting and kicking the aforementioned victims, and you have thereby committed an offence punishable under section 147 of the Penal Code (Cap 224, 2008 Rev Ed).

16 A similar charge was preferred against the other Appellants, with reference made to the co-Appellants.[4] I refer to each of the Appellants' charge under s 147 of the Penal Code as the "Rioting Charge".

17 I next summarise the parties' cases at trial on the events of 1 May 2017.

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2 ROP at pp 859 to 860: The DJ's GD at [1].

3 ROP at p 8: Charge preferred against Michael under s 147 of the Penal Code.

4 ROP at pp 12 to 14 and 19: Charges preferred against Lye Choon, Meng Chong, Wan Seng and Regina under s 147 of the Penal Code.

The Prosecution's case in the court below

Michael's kicked George's car and started a riot involving a series of assaults by the Appellants against the Victims

18 When the Bar closed sometime in the early hours of 1 May 2017, the Victims left the Bar and proceeded to George's car (the "Car") which was parked at parking lot number ("Lot") 42 of an open carpark near the Bar (the "Carpark"). Upon arriving at Lot 42, the Victims sat in the Car. George was seated in the driver's seat, Maureen was seated in the front passenger seat, Daniel was in the rear passenger seat behind George, and Sreelatha was in the rear passenger seat behind Maureen.[5]

19 George started the engine of the Car and turned on the headlights. At around this time, Michael walked past the front of the Car, supported by two persons. He kicked the headlights of the Car a few times, first on the left, and then on the right of the Car.[6]

20 According to the Prosecution, this led to a riot involving a series of assaults by the Appellants against the Victims as detailed below.[7]

Hurt was caused to Daniel near Lot 42

21 In response to Michael kicking the headlights of the Car, Daniel alighted from the Car, told Michael to stop kicking the Car and asked Michael why he had kicked the Car. Michael then removed his arms from the shoulders of the two persons who were supporting him and kicked Daniel twice. The second kick

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5 ROP at pp 987 to 988: Prosecution's Closing Submissions dated 25 October 2019 ("PCS") at para 10; ROP at p 862: The DJ's GD at [10].

6 ROP at pp 987 to 988: PCS at para 10; ROP at p 862: The DJ's GD at [11].

7 ROP at p 988: PCS at para 11.

by Michael caused Daniel to fall to the ground. Daniel was then assaulted by a few unknown persons before he managed to get up from the ground.[8]

22 Maureen, George and Sreelatha alighted from the Car to find out what was happening. Daniel asked Maureen to call the police. Maureen retrieved her mobile phone from the Car and called the police.[9]

Hurt was caused to George near Lot 55

23 Whilst Maureen was calling the police, George proceeded to walk to various persons scattered around the Carpark. In the course of doing so, the following occurred:

(a) George first walked past Regina, who was standing near Lot 41.[10]

(b) George then walked towards Meng Chong, who was standing near Lot 59. George asked Meng Chong to calm down.[11]

(c) George noticed that Lye Choon was at the Carpark but chose not to approach him.[12]

(d) George observed Wan Seng retrieving a black baton ("the baton") from a blue van (the "Van") parked at Lot 55. Wan Seng then stood near the Van, tapping the baton on his hand.[13]

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8 ROP at pp 988 to 989: PCS at paras 10 and 12; ROP at p 863: The DJ's GD at [12].

9 ROP at p 863: The DJ's GD at [12].

10 ROP at pp 989 to 990: PCS at para 13.

11 ROP at pp 989 to 990: PCS at para 13.

12 ROP at pp 989 to 990: PCS at para 13.

13 ROP at pp 989 to 990: PCS at para 13.

24 George then noticed that Michael was also standing near the Van. George proceeded towards Michael and tried to speak to him. However, as he did so, George was kicked from the back on his left shoulder, causing him to fall forward on top of Michael.[14]

25 As George lay face-down on the ground, Wan Seng, Lye Choon and Meng Chong surrounded him. Wan Seng hit George on his back with the baton, whilst Lye Choon and Meng Chong beat George using their bare hands.[15]

26 As George was being assaulted, Michael managed to get up from the ground. Michael then joined Wan Seng, Lye Choon and Meng Chong and assaulted George.[16]

Hurt was caused to Maureen and Sreelatha near Lot 57 and Lot 58

27 Maureen noticed that George was being assaulted and ran towards him.[17] However, as she ran past Lot 57 and Lot 58, Regina pulled Maureen back by her hair. This caused Maureen to fall to the ground.[18]

28 While Maureen lay on the ground and facing upwards, Regina hit and kicked Maureen's head.[19]

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14 ROP at pp 990 to 991: PCS at para 14; ROP at pp 863 to 864: The DJ's GD at [14].

15 ROP at pp 990 to 991: PCS at para 14; ROP at pp 863 to 864: The DJ's GD at [14].

16 ROP at pp 990 to 991: PCS at para 14; ROP at pp 863 to 864: The DJ's GD at [14].

17 ROP at pp 990 to 991: PCS at para 14; ROP at p 864: The DJ's GD at [15].

18 ROP at p 991: PCS at para 15; ROP at p 864: The DJ's GD at [15].

19 ROP at p 991: PCS at para 15; ROP at p 864: The DJ's GD at [15].

29 Daniel noticed that Maureen and George were being assaulted. Daniel asked his wife, Sreelatha, to help Maureen while he proceeded towards where George was being assaulted.[20]

30 Sreelatha proceeded towards Maureen near Lot 57 and Lot 58. As she tried to help Maureen stand up, Regina slapped and punched Sreelatha on her face.[21]

The events which occurred after the riot and the injuries sustained by the Victims

31 As the assaults were taking place, two unknown men in plain clothes approached the group and asked everyone to stop. The two unknown men claimed that they were police officers. The Appellants stopped assaulting the Victims.[22]

32 Wan Seng proceeded to place the baton in the Van. Wan Seng and Regina then went into the Van with the intention of driving out of the Carpark. Maureen, however, stood in front of the Van to prevent them from doing so.[23]

33 Uniformed police officers arrived subsequently. Maureen and George were conveyed to Changi General Hospital ("CGH"). The injuries sustained by Maureen and George were documented in medical reports prepared by CGH.

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20 ROP at p 991: PCS at para 15; ROP at p 864: The DJ's GD at [15].

21 ROP at p 991: PCS at para 15; ROP at p 864: The DJ's GD at [15].

22 ROP at p 992: PCS at para 16; ROP at pp 864 to 865: The DJ's GD at [16].

23 ROP at p 992: PCS at para 16; ROP at pp 864 to 865: The DJ's GD at [16].

Meanwhile, Daniel felt pain in his lower abdomen and Sreelatha suffered injury to her eye and a cut on her lip.[24]

The Appellants possessed a common object to cause hurt to the Victims by their participation in the unlawful assembly

34 The Prosecution contended in the court below that the Appellants had participated in an unlawful assembly by hitting and kicking one or more of the Victims:[25]

(a) Michael instigated the violence by kicking Daniel near Lot 42. Thereafter, Michael was a participant in assaulting George when George was being assaulted by Wan Seng, Lye Choon and Meng Chong near Lot 55.[26]

(b) Upon seeing Michael assaulting Daniel, Wan Seng armed himself with the baton and participated in the unlawful assembly by assaulting George with the baton.[27]

(c) Regina actively participated in the unlawful assembly by: (i) assaulting Maureen, who was trying to stop the assault on George by Wan Seng, Lye Choon, Meng Chong and Michael; and (ii) hitting Sreelatha, who was trying to help Maureen. Regina did the above near Lot 57 and Lot 58. In doing so, she shared the common object of the Appellants to use violence on the Victims.[28]

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24 ROP at pp 992 to 994: PCS at paras 17 to 18; ROP at pp 864 to 866: The DJ's GD at [16] to [19].

25 ROP at p 994: PCS at para 19; ROP at p 866: The DJ's GD at [20].

26 ROP at pp 990 to 991, 994 and 996: PCS at paras 14, 20 and 24.

27 ROP at p 997: PCS at para 25.

28 ROP at pp 991 and 999: PCS at paras 15 and 30.

(d) Lye Choon participated in the unlawful assembly by assaulting George near Lot 55. He was also present at the Carpark during the altercation between Michael and Daniel. He would have been aware of the common object of the Appellants to use violence on the Victims.[29]

(e) Finally, Meng Chong participated in the unlawful assembly by assaulting George near Lot 55. He was aware of the altercation between Michael and Daniel, given that he had been approached by George near Lot 59 shortly before George was assaulted (see [23(b)] above). He would have been aware of the common object of the Appellants to use violence on the Victims.[30]

The Appellants' cases in the court below

35 The Appellants were jointly represented by a single counsel in the court below. The Appellants disagreed with the Prosecution's characterisation of the events of 1 May 2017.

36 Instead, the Appellants argued that the following occurred on 1 May 2017:

(a) When the Appellants left the Bar, Michael made his way to the Carpark first. As he was walking towards his vehicle, he was confronted by the Victims and assaulted by them. As Michael had consumed a significant amount of alcohol, he was unable to recall what had happened at the Carpark.[31]

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29 ROP at pp 999 to 1000: PCS at para 32.

30 ROP at pp 990 to 991 and 1000 to 1001: PCS at paras 14 and 35.

31 ROP at p 867: The DJ's GD at [22] to [23].

(b) Wan Seng and Regina arrived at the Carpark and saw Michael being assaulted by the Victims. Wan Seng took the baton and proceeded towards Michael to assist him. However, Regina pulled Wan Seng away and prevented him from going towards Michael. She also snatched the baton from Wan Seng and put it in the Van.[32]

(c) Meng Chong and Lye Choon, together with one Mr Chua Kok Meng Benny ("Benny"), arrived at the Carpark shortly after and tried to separate the parties. As Lye Choon had consumed a significant amount of alcohol, he was unable to recall what had happened at the Carpark.[33]

(d) In relation to the incident between Regina, Maureen and Sreelatha, Regina denied assaulting Maureen and Sreelatha. According to Regina, Maureen pulled her hair and hit her. Acting in self-defence, Regina pushed Maureen.[34]

The DJ's decision

The DJ's decision to convict the Appellants of their respective Rioting Charge

37 The DJ convicted the Appellants of their respective Rioting Charges. The DJ's grounds of decision are set out in *Public Prosecutor v Michael Marcus Liew and others* [2020] SGDC 104 (the "DJ's GD").[35]

38 In finding that the Appellants were guilty of the Rioting Charge, the DJ considered that the key issue for determination was a factual one. It related to

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32 ROP at pp 867 to 868: The DJ's GD at [24] to [25].

33 ROP at pp 868 to 869: The DJ's GD at [26] to [27].

34 ROP at p 868: The DJ's GD at [25].

35 ROP at pp 857 to 895: The DJ's GD.

whether the collective testimony given by the Victims was credible and proved the Prosecution's case of the occurrence of the riot beyond a reasonable doubt, or was undermined by the testimonies of the Appellants, as well as the Appellants' witness, Benny.[36]

39 The DJ found that the evidence of the Victims was credible.[37] I summarise the key reasons for his finding below:

(a) The DJ found that the testimonies of the Victims were materially consistent. While they were each able to describe the events that took place at the Carpark to varying degrees, this did not affect their credibility and the reliability of their testimonies as: (i) there were many persons at the Carpark at the material time and the Victims would not have been able to witness everything that took place; and (ii) the discrepancies in the Victims' testimonies were minor and could be attributed to memory lapses due to the passage of time.[38]

(b) The key discrepancy in the Victims' account related to whether Michael had been supported by two persons when he had walked past the Car at Lot 42. The DJ found that this was not a major discrepancy as: (i) the Victims were all able to identify that Michael had kicked the Car; (ii) the Victims consistently testified that Michael had been accompanied by other persons when he kicked the Car; and (iii) George's account that Michael had not been supported by two persons could have been simply because George had failed to observe whether Michael was being supported at all. Ultimately, the discrepancy

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36 ROP at p 869: The DJ's GD at [28].

37 ROP at pp 869 to 871: The DJ's GD at [29] to [33].

38 ROP at pp 869 to 870: The DJ's GD at [30].

did not affect their evidence that Michael had kicked the Car before kicking Daniel when Daniel exited the Car.[39]

(c) The Appellants were identified by the Victims based on distinctive physical traits.[40]

(d) The injuries sustained by Maureen and George as set out in the medical reports were consistent with their accounts of how they had been assaulted.[41]

40 The DJ found that the defence of each Appellant was not credible.[42] I summarise the key reasons for his finding below:

(a) Michael's defence was that he had been intoxicated and was therefore unable to remember anything. This was not credible, given that the Victims had identified Michael as the individual who had kicked Daniel twice and had been involved in assaulting George. Michael's intoxication was self-induced and did not amount to a valid defence at law. Further, Michael had not made any convincing argument that the defence of intoxication applied on the facts.[43]

(b) Wan Seng's defence was that he had proceeded to Lot 55 to assist Michael, who had been surrounded by four to five persons. Further, while he took the baton from the Van, he intended to use the

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39 ROP at p 870: The DJ's GD at [31].

40 ROP at p 870: The DJ's GD at [32].

41 ROP at pp 870 to 871: The DJ's GD at [33].

42 ROP at pp 871 to 879: The DJ's GD at [34] to [60].

43 ROP at pp 871 to 872: The DJ's GD at [34] to [36].

baton only in self-defence and not to actually hit anyone with the baton. This was not credible as:[44]

(i) Wan Seng's testimony that Michael had been surrounded by four to five persons at Lot 55 was materially inconsistent with his investigative statement to the police; there, he had only said that Michael and an "Indian man" had been fighting. Wan Seng's explanation of this inconsistency was that the statement recorder had failed to record what Wan Seng had said about four to five people surrounding Michael. This was, however, refuted by the statement recorder, Station Inspector Mohamed Rashid ("SI Rashid"). The DJ found SI Rashid to be a truthful witness.

(ii) Wan Seng's claim that he had not used the baton was untrue. George saw Wan Seng taking the baton from the Van and tapping the baton on his hand. Further, Maureen and Daniel saw Wan Seng hitting George with the baton.

(c) Regina's defence in relation to her conduct towards Maureen was that she had acted in self-defence when she was assaulted by Maureen. However, this was unbelievable as: (i) there was no corroborative evidence to support Regina's claim that she had been assaulted by Maureen; and (ii) she was inconsistent about how she had responded to Maureen's purported assault, wavering between *pushing* Maureen and *swinging* her arm to block Maureen. In relation to Sreelatha, Regina claimed that she had not assaulted Sreelatha. However, Regina was not a truthful witness.[45]

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44 ROP at pp 872 to 874: The DJ's GD at [37] to [41].

45 ROP at pp 874 to 875: The DJ's GD at [42] to [46].

(d) Lye Choon's defence was that he had been so intoxicated that he had been unaware of what had happened. This was not credible, given that both Meng Chong and Regina had stated in their investigative statements that Lye Choon had walked or rushed forward "towards the commotion". Further, Maureen positively identified Lye Choon as one of the individuals who had assaulted George near Lot 55. In any case, Lye Choon's intoxication was self-induced and did not amount to a valid defence at law.[46]

(e) Meng Chong's defence was that he had not been involved in the events at the Carpark as he had been taking care of Lye Choon together with Benny. However, he was positively identified by Maureen as one of the individuals who had assaulted George near Lot 55. He was identified on the basis of his lack of neck tattoos and Maureen's description as the "taller guy". Maureen's clear testimony meant that Meng Chong's defence was not believable.[47]

(f) The evidence provided by the Appellants' witness, Benny, during the trial was that there had been a confrontation between Wan Seng, Regina and "two male Indians and a Filipina" (*ie*, George, Daniel and Maureen). In relation to Regina and Maureen, Benny's evidence was that Regina and Maureen had a heated argument. In the course of this argument, Maureen "laid hands first", and Regina retaliated. In relation to the incident involving Wan Seng, Wan Seng had been assaulted by an Indian man, following which Michael kicked the Indian man. Meanwhile, Benny and Meng Chong were taking care of

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46 ROP at pp 875 to 876: The DJ's GD at [47] to [52].

47 ROP at p 877: The DJ's GD at [53] to [56].

> Lye Choon. Benny was not a credible witness as: (i) his testimony that some of the Victims had initiated the fight was inconsistent with his investigative statement; there, he had stated that he had been unaware of who initiated the fight; and (ii) his testimony that he and Meng Chong had been uninvolved in the fight because they had been taking care of Lye Choon was inconsistent with his investigative statement, where he had stated that he had intervened by trying to separate the group involved in the fight.[48]

41 Ultimately, the DJ found that the Appellants had been the aggressors in the events at the Carpark. The DJ found that the incident had commenced with Michael kicking the Car. Thereafter, Michael kicked Daniel, which was the start of the riot. This was followed by Wan Seng, Lye Choon, Meng Chong and Michael assaulting George in the vicinity of Lot 55. Regina then "joined in the group's violence" by assaulting Maureen who was rushing towards George. Regina also assaulted Sreelatha who came to help Maureen. Therefore, the DJ found that the Appellants had participated in the unlawful assembly as a result of their individual actions of assaulting at least one of the Victims.[49]

The plea of guilt entered by Michael and Wan Seng with respect to their remaining charges

42 Following the DJ's decision to convict the Appellants of their respective Rioting Charges, Michael and Wan Seng each pleaded guilty to a separate charge as follows:

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48 ROP at pp 878 to 879: The DJ's GD at [57] to [60].

49 ROP at pp 880 to 881: The DJ's GD at [63].

(a) Michael pleaded guilty to a charge of behaving in a disorderly manner under s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) (the "MOA") (the "Disorderly Behaviour Charge"). Briefly, after the events at the Carpark, police officers arrived in response to the call made by Maureen. Michael was instructed by the police officers to stay with his friends at one side of the Carpark. He defied the orders of the police officers and walked over to the Victims and shouted vulgarities at them. Michael ignored several warnings by the police officers to calm down and move away from the Victims. He then walked up to a police officer and shouted loudly in the police officer's face, challenging his authority as a police officer, and refused to step back despite being asked to do so.[50]

(b) Wan Seng pleaded guilty to a charge under s 22(1)(*a*) of the MOA (the "Offensive Weapon Charge") for being armed with the baton, an offensive instrument, without lawful authority or a lawful purpose.[51]

The DJ's decision on sentence

43 The DJ considered that the sentencing principles of deterrence and retribution were engaged.[52]

44 After considering the parties' submissions as well as the precedents cited therein, the DJ imposed the following sentences on the Appellants:

(a) With respect to Michael, the DJ imposed sentences of 15 months' imprisonment for the Rioting Charge and two weeks'

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50 ROP at pp 881 to 882: The DJ's GD at [65] to [67].

51 ROP at pp 882 to 883: The DJ's GD at [68] to [70].

52 ROP at p 892: The DJ's GD at [89].

imprisonment for the Disorderly Behaviour Charge. Given Michael's higher culpability as his actions had triggered the series of incidents at the Carpark, the two individual sentences were ordered to run consecutively.[53]

(b) With respect to Wan Seng, the DJ imposed sentences of 15 months' imprisonment for the Rioting Charge and three months' imprisonment for the Offensive Weapon Charge. Given Wan Seng's higher culpability as he had used the baton to commit the rioting offence, as well as his antecedents which included a prior rioting offence, the two sentences were ordered to run consecutively.[54]

(c) With respect to Lye Choon, the DJ imposed a sentence of 15 months' imprisonment for the Rioting Charge.[55]

(d) With respect to Regina, the DJ imposed a sentence of 15 months' imprisonment for the Rioting Charge.[56]

(e) With respect to Meng Chong, the DJ found that his culpability was lower than the co-Appellants. Therefore, the DJ imposed a sentence of 12 months' imprisonment for the Rioting Charge.[57]

45 The Appellants were dissatisfied with their convictions and sentences and they each filed a notice of appeal. Thereafter, two of the Appellants, Michael and Lye Choon, applied to adduce fresh evidence on appeal by way of

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53 ROP at pp 892 to 893: The DJ's GD at [92] to [93].

54 ROP at pp 892 to 893: The DJ's GD at [92] and [94].

55 ROP at p 893: The DJ's GD at [95].

56 ROP at p 893: The DJ's GD at [95].

57 ROP at p 893: The DJ's GD at [96].

criminal motions. Before considering the parties' cases on appeal, I briefly summarise the criminal motions filed by Michael and Lye Choon and the outcomes of the criminal motions.

The criminal motions filed by Michael and Lye Choon in the course of this appeal

Summary of the criminal motions

46 Michael sought leave to adduce fresh evidence on appeal by way of two criminal motions as follows:

(a) In Criminal Motion No 61 of 2021 ("CM 61"), Michael sought leave under s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the "2012 CPC") to adduce a psychiatric report prepared by one Dr Tan Sheng Neng ("Dr Tan") of Promises Healthcare Pte Ltd dated 16 February 2021 ("Dr Tan's Psychiatric Report for Michael").[58]

(b) In Criminal Motion No 67 of 2021 ("CM 67"), Michael sought leave under s 392 of the 2012 CPC to adduce a report prepared by one Mr Low Xuankai Alex, an analyst from the Analytical Toxicology Laboratory of the Health Sciences Authority (the "HSA"), dated 15 May 2017 (the "HSA Report for Michael").[59]

47 Separately, Lye Choon sought leave under s 392 of the 2012 CPC to adduce a psychiatric report prepared by Dr Tan dated 28 March 2021

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58 Supplementary Record of Proceedings for Remittal Hearing ("Supplementary ROP") at pp 356 to 418: Dr Tan's Psychiatric Report for Michael.

59 Supplementary ROP at p 481: The HSA Report for Michael.

("Dr Tan's Psychiatric Report for Lye Choon").[60] This was done by way of Criminal Motion No 62 of 2021 ("CM 62").

48 Michael and Lye Choon sought to adduce the psychiatric reports as fresh evidence in support of their defence of intoxication. This was because Dr Tan opined in the two psychiatric reports that Michael and Lye Choon had suffered from alcohol intoxication at the material time such that they had not been capable of forming any requisite criminal intention. Dr Tan's Psychiatric Report for Michael and Lye Choon were procured by Michael and Lye Choon *after* the release of the DJ's GD and after the two of them had been advised by newly appointed counsel.

49 Further, Michael sought to adduce a report by the HSA as this was referred to in Dr Tan's Psychiatric Report for Michael. Although the HSA Report for Michael was in Michael's possession at the time of the trial, it was not adduced then.

50 At the hearing before me, counsel for Michael and Lye Choon recognised that the question of whether an application for fresh evidence to be adduced on appeal ought to be allowed was dependent on whether the following three conditions in *Ladd v Marshall* [1954] 1 WLR 1489 were satisfied: (a) the fresh evidence could not have been obtained with reasonable diligence for use at the trial; (b) the fresh evidence was relevant such that it had an important influence, though it need not be decisive; and (c) the fresh evidence was apparently credible, though it need not be incontrovertible (referred to as the "*Ladd v Marshall* conditions").

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60 Supplementary ROP at pp 420 to 479: Dr Tan's Psychiatric Report for Lye Choon.

51 Counsel for Michael and Lye Choon submitted that the two psychiatric reports were reliable and relevant. However, both Michael and Lye Choon accepted that the first of the three *Ladd v Marshall* conditions was not satisfied in their respective cases, since the psychiatric reports could have been obtained with reasonable diligence for use at the trial, and the HSA Report for Michael was already in Michael's possession during the trial. However, they submitted that this ought not to be fatal to their applications, given the nature of criminal proceedings and its serious consequences.[61]

52 The Prosecution, however, took the position that the two psychiatric reports did not satisfy the *Ladd v Marshall* conditions. The Prosecution submitted, in particular, that the psychiatric reports were not reliable and did not meet the minimum requirements of an expert report as set out in *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 (at [125]–[131]). In relation to the HSA Report for Michael, the Prosecution's position was that Michael had decided at the trial not to adduce the report, and that his blood alcohol level was in any case not relevant to the issue of whether an offender was intoxicated.[62]

My decision on the criminal motions

53 I granted the applications in CM 61, CM 62 and CM 67 and set out my reasons for allowing the three applications by way of oral remarks then.[63] For completeness, I briefly summarise the reasons which underpinned that decision:

(a) Section 392 of the 2012 CPC allowed for fresh evidence to be adduced on appeal subject to the *Ladd v Marshall* conditions being

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61 11 August 2021 Minute Sheet for CM 61, CM 62 and CM 67 at para 3.

62 11 August 2021 Minute Sheet for CM 61, CM 62 and CM 67 at para 4.

63 11 August 2021 Minute Sheet for CM 61, CM 62 and CM 67.

satisfied. However, in *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 ("*Iskandar*") (at [72], citing *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [16]), the Court of Appeal endorsed a less restrictive approach to be adopted in criminal cases: *ie*, while the three *Ladd v Marshall* conditions of "non-availability", "relevance" and "reliability" applied in criminal cases, the first condition of "non-availability" was less paramount than the other two conditions.

(b) It was clear that the condition of non-availability was not satisfied. The two psychiatric reports assessed the mental state of Michael and Lye Choon *at the time of the offences*, which necessarily meant that such evidence could have been obtained with reasonable diligence for use at the trial. Further, Michael and Lye Choon were advised and represented by counsel in the court below, albeit different from the counsel representing them at the appeal. I also noted that counsel in the court below had advanced an argument that Michael and Lye Choon had been intoxicated, though no expert evidence had been adduced to substantiate this argument. Notwithstanding that they had been represented at trial, I accepted that Michael and Lye Choon may not have appreciated the full significance of their mental state and the need to adduce evidence which would have substantiated their claims that they had been intoxicated.

(c) The two psychiatric reports by Dr Tan were *prima facie* relevant as they went towards establishing the defences of intoxication which were relevant to determining part of Michael's and Lye Choon's arguments on appeal.

(d) In assessing whether the condition of reliability was satisfied, I was mindful of the Court of Appeal's reminder in *Iskandar* (at [74]) that, when assessing whether to grant leave to adduce additional evidence, the court needed to only assess the *reliability* of the psychiatric reports, and not the *merits* of the psychiatric reports. In other words, I only had to consider whether the psychiatric reports were apparently credible. I took the view that the psychiatric reports were not completely devoid of credibility. However, I expressed significant reservations over the contents of the psychiatric reports for two reasons: (i) whether Michael and Lye Choon had been intoxicated to the extent that they would not have had the necessary *mens rea* was an ultimate issue for the court to determine, and not an issue for Dr Tan to determine by way of the two psychiatric reports; and (ii) the psychiatric reports asserted that Michael and Lye Choon had blood alcohol concentration levels which were significantly higher than the levels determined by the HSA. While Dr Tan's conclusion on the blood alcohol concentration levels were based on a backward extrapolation, there was no mention in the two psychiatric reports of the *specific* method used by Dr Tan to perform a backward extrapolation, and it appeared that Dr Tan based his conclusions only on the accounts provided by Michael and Lye Choon of the amount of alcohol they had consumed before the events at the Carpark.

(e) Ultimately, however, given the Court of Appeal's reminder in *Iskandar* (at [74]), I granted the applications in CM 61 and CM 62. This was subject to the Prosecution being allowed to cross-examine Dr Tan on the two psychiatric reports. I also granted leave to the Prosecution to adduce a medical report from the Institute of Mental Health (the "IMH") if they thought it necessary.

(f) Since CM 76 was ancillary to CM 61, and I granted the application in CM 61 for Dr Tan's Psychiatric Report for Michael to be adduced as fresh evidence, I similarly granted the application in CM 76 for the HSA Report for Michael to be adduced as fresh evidence.

54 As a consequence of my decision, the case was remitted to the court below.

The remittal hearing in the court below

55 At the remittal hearing, Michael and Lye Choon relied on Dr Tan's evidence. I summarise Dr Tan's evidence below.

Dr Tan's evidence in relation to Michael

56 Dr Tan stated that Michael exhibited the following symptoms, based on the account provided to him by Michael:

(a) First, Michael exhibited an altered perception of the environment. This was evidenced by the fact that Michael remembered walking to his car alone and unassisted, despite the objective facts showing otherwise, and the fact that he remembered a "fat Malay lady" cursing that she was in pain. Further, Michael recalled being in a police lock-up for two to three nights despite contrary evidence. Finally, Michael recalled that a blood test had taken place but was unable to recall the reason for the blood test.[64]

(b) Second, Michael exhibited ataxia and a lack of coordination, which was demonstrated by his manner of walking and inability to

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64 Supplementary ROP at p 325: *Public Prosecutor v Michael Marcus Liew and others* [2023] SGDC 6 ("the DJ's Remittal GD") at [7(a)] and [8(a)].

balance, as well as the fact that he had stumbled to his car and needed to be physically supported by someone.[65]

(c) Third, Michael exhibited impaired judgment. According to Dr Tan, this was demonstrated by Michael's refusal to take a taxi or a lift from a friend, and inability to consent to a blood test until about ten hours later.[66]

(d) Fourth, Michael exhibited behavioural changes, as demonstrated by the fact that he was otherwise untraced for criminal offences and had not been involved in fights before.[67]

(e) Fifth, Michael suffered from alcohol-induced amnesia at the material time, given his inability to clearly recall what had occurred.[68]

57 Dr Tan stated that he adopted a symptoms-based approach to estimate Michael's blood alcohol concentration level at the material time by backward extrapolation. According to Dr Tan, this approach was supported by scientific literature. Using this approach, Dr Tan estimated that Michael's blood alcohol concentration level would have been near 200mg/100ml.[69]

58 As a result of Michael's alcohol intoxication, Dr Tan concluded that Michael was not capable of forming the requisite criminal intention for the Rioting Charge. In particular, Dr Tan stated that Michael's symptoms meant that his ability to perceive and receive information had been badly impaired.

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65 Supplementary ROP at pp 325 to 326: The DJ's Remittal GD at [7(a)] and [8(b)].

66 Supplementary ROP at pp 325 to 326: The DJ's Remittal GD at [7(a)] and [8(c)].

67 Supplementary ROP at pp 325 to 326: The DJ's Remittal GD at [7(a)] and [8(d)].

68 Supplementary ROP at pp 325 to 326: The DJ's Remittal GD at [7(a)] and [8(e)].

69 Supplementary ROP at p 326: The DJ's Remittal GD at [9].

Thus, he was not aware of what was happening around him even if it was a few metres away. Therefore, according to Dr Tan, it would have been quite difficult or impossible for Michael to have been aware of what was happening eight metres away, *ie*, the incident involving Regina, Maureen and Sreelatha. Therefore, the possibility of Michael being aware that he had been part of a wider assembly or what the remaining Appellants were doing at the material time was low.[70]

Dr Tan's evidence in relation to Lye Choon

59 Dr Tan stated that Lye Choon exhibited the following symptoms based on the account provided to him by Lye Choon:

(a) First, Lye Choon exhibited an altered perception of the environment. This was evidenced by the fact that Lye Choon had been unaware of what was discussed at the gathering with his friends. Further, Lye Choon remembered that the police had asked him to accompany them to the police station on foot, and that he had made this journey on foot while being assisted by Benny and Meng Chong. However, he was unsure if he had walked on the pavement or the roadside, and how long the trip took.[71]

(b) Second, Lye Choon exhibited ataxia and a lack of coordination, which was demonstrated by the fact that he had to be assisted by Benny and Meng Chong while making walking to the police station.[72]

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70 Supplementary ROP at pp 326 to 327: The DJ's Remittal GD at [10].

71 Supplementary ROP at pp 327 to 328: The DJ's Remittal GD at [11(a)] and [12(a)].

72 Supplementary ROP at pp 327 to 328: The DJ's Remittal GD at [11(a)] and [12(b)].

(c) Third, Lye Choon suffered from alcohol-induced amnesia at the material time given that there were significant gaps in his memory.[73]

60 As was done in Michael's case, Dr Tan adopted a symptoms-based approach to estimate Lye Choon's blood alcohol concentration level at the material time by backward extrapolation. Dr Tan estimated that Lye Choon's blood alcohol concentration level would have been well beyond 200mg/100ml.[74]

61 As a result of Lye Choon's alcohol intoxication, Dr Tan concluded that Lye Choon was not capable of forming the requisite criminal intention for the Rioting Charge. In particular, Dr Tan stated that Lye Choon's symptoms would have meant that his awareness of the environment seemed to have stopped at the time he had been drinking at the Bar. Lye Choon would not have been aware of what the co-Appellants were doing at the material time at the Carpark about eight metres away. Neither would Lye Choon have been aware that he was part of a wider assembly of at least five people.[75]

The position of Michael and Lye Choon at the remittal hearing based on the evidence of Dr Tan

62 Relying on Dr Tan's evidence, both Michael and Lye Choon argued that their intoxication meant they would not have been aware of anything about the incident involving Regina, Maureen, and Sreelatha since that took place about eight metres away from where Michael and Lye Choon were. Further, they submitted that they would not have been aware that they were part of an

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73 Supplementary ROP at pp 327 to 328: The DJ's Remittal GD at [11(a)] and [12(c)].

74 Supplementary ROP at p 328: The DJ's Remittal GD at [13].

75 Supplementary ROP at p 329: The DJ's Remittal GD at [14].

assembly of at least five persons and would not have possessed a common object with the co-Appellants to cause hurt to the Victims.[76]

Rebuttal evidence by the Prosecution

63 The Prosecution adduced the following psychiatric reports to rebut the evidence of Dr Tan in his psychiatric reports:

(a) a psychiatric report in relation to Michael's condition which was prepared by one Dr Charles Mak Chia Meng ("Dr Mak"), a Consultant Psychiatrist at the IMH, dated 6 February 2022 ("Dr Mak's Psychiatric Report for Michael");[77]

(b) a psychiatric report which was prepared by Dr Mak dated 21 May 2021 providing his opinion on Dr Tan's approach to estimate blood alcohol concentration levels by backward extrapolation;[78] and

(c) a psychiatric report in relation to Lye Choon's condition which was prepared by one Dr Guo Song ("Dr Guo"), a Senior Consultant Psychiatrist at the IMH, dated 31 January 2022 ("Dr Guo's Psychiatric Report for Lye Choon").[79]

64 Dr Mak's evidence in relation to Michael's condition was as follows:

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76 Supplementary ROP at pp 335 to 336: The DJ's Remittal GD at [25] to [29].

77 Supplementary ROP at pp 487 to 489: Dr Mak's Psychiatric Report for Michael dated 6 February 2022.

78 Supplementary ROP at pp 483 to 485: Dr Mak's Report dated 21 May 2021.

79 Supplementary ROP at pp 491 to 497: Dr Guo's Psychiatric Report for Lye Choon dated 31 January 2022.

(a) Dr Mak assessed that Michael was in a state of acute alcohol intoxication at the material time.[80]

(b) While Michael's acute alcohol intoxication may have contributed to his offences in the sense that his judgment and decision-making may have been impaired, this did not amount to a direct causal link to his offences for the following reasons:[81]

(i) First, Michael retained awareness of his actions, although Michael probably did not have complete awareness of his surroundings. Examples of Michael's conduct which demonstrated that he retained awareness included the fact that he could navigate to where he had parked his car in the Carpark and was able to draw a sketch plan when his statement was recorded, which marked out where his car was parked, as well as the buildings around him and where the commotion at the Carpark occurred.[82]

(ii) Second, Michael was able to control his actions. This was demonstrated by the fact that he had been able to de-escalate the level of violence. This was evident from Michael's ability to avoid exhibiting any violence towards the police officers when he had behaved in a disorderly manner (an offence which he pleaded guilty to – see [42(a)] above). Michael's ability to refrain from committing violence when the police officers arrived also

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80 Supplementary ROP at p 330: The DJ's Remittal GD at [16].

81 Supplementary ROP at p 330: The DJ's Remittal GD at [16].

82 Supplementary ROP at p 331: The DJ's Remittal GD at [17(a)].

demonstrated that Michael understood the difference between right and wrong.[83]

(c) While there was some impairment to Michael's coordination abilities, this was not significant since Michael was able to stand unassisted and deliver a forceful kick which caused Daniel to fall (see [21] above). Further, while there was some impairment to Michael's ability to control his actions due to the alcohol that he had consumed, it was not significant.[84]

(d) The fact that Michael had difficulty recalling events which had transpired did not mean that Michael lacked awareness or an understanding of the difference between right and wrong.[85]

65 Dr Guo's evidence in relation to Lye Choon's condition was as follows:

(a) Lye Choon was in a state of alcohol intoxication at the material time.[86]

(b) Further, Lye Choon was in a state of alcohol-induced amnesia at the material time. However, while he was unable to remember what he had done at the material time, he would still have been conscious of his behaviours, and would have been able to understand his actions, been aware of the happenings around him, and been able to respond relevantly. However, his decision-making might have been imprudent

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83 Supplementary ROP at p 331: The DJ's Remittal GD at [17(b)] to [17(c)].

84 Supplementary ROP at pp 331 to 332: The DJ's Remittal GD at [18].

85 Supplementary ROP at p 332: The DJ's Remittal GD at [19].

86 Supplementary ROP at pp 333 to 334: The DJ's Remittal GD at [21].

and so he could have behaved irresponsibly due to the disinhibitory effects of alcohol.[87]

(c) In relation to what was happening about eight meres away from him (*ie*, the incident involving Regina, Maureen, and Sreelatha), Dr Guo stated that Lye Choon should have been aware of that incident as he was conscious. However, Dr Guo stated that it was possible that Lye Choon's focus had been on the person he had directly been involved in an altercation with, and he may have, therefore, neglected what was happening eight metres away from him.[88]

The DJ's decision following the remittal hearing

66 Having considered the fresh evidence adduced at the remittal hearing, the DJ found that the fresh evidence had no effect on his earlier verdict.[89] In other words, Michael and Lye Choon each remained guilty of the Rioting Charge. The DJ's grounds of decision in relation to the remittal hearing are set out in *Public Prosecutor v Michael Marcus Liew and others* [2023] SGDC 6 ("the DJ's Remittal GD").[90]

67 The reasons for the DJ's decision are briefly set out below:

(a) The DJ found that Dr Tan's evidence was not cogent for the following reasons:[91]

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87 Supplementary ROP at pp 333 to 334: The DJ's Remittal GD at [21].

88 Supplementary ROP at pp 334 to 335: The DJ's Remittal GD at [23].

89 Supplementary ROP at p 335: The DJ's Remittal GD at [24].

90 Supplementary ROP at pp 320 to 352: The DJ's Remittal GD.

91 Supplementary ROP at pp 337 to 345: The DJ's Remittal GD at [30] to [45].

(i) Dr Tan's evidence was based almost entirely on the accounts provided by Michael and Lye Choon more than three years after the incident at the Carpark. The DJ noted that the Court of Appeal had stated in *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 (at [39]) that an accused person may not always be the best source of information about his own physical and mental state.[92]

(ii) Dr Tan also failed to compare the accounts provided by Michael and Lye Choon with independent and objective evidence which could have shed more light on their conditions. While Dr Tan stated that he had reviewed other materials, he was unable to say with certainty which materials he had considered in making his assessment and he also made no reference to any specific material in his reports.[93]

(iii) There were clearly deficiencies in the accounts provided by Michael and Lye Choon. For example, Dr Tan stated that Michael had issues remembering events from the point he had departed from the Bar. However, Michael's investigative statement which was recorded on the day of the incident showed that Michael remembered walking back to his car. Dr Tan conceded that he would have been able to prepare a better report if he had more evidence which showed what Michael had been able to remember about the incident.[94]

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92 Supplementary ROP at pp 337 to 338: The DJ's Remittal GD at [32] to [34].

93 Supplementary ROP at pp 338 to 340: The DJ's Remittal GD at [35].

94 Supplementary ROP at p 340: The DJ's Remittal GD at [36] to [37].

(iv) Dr Tan gave no explanation for his calculation of the estimated blood alcohol concentration levels of Michael and Lye Choon based on their self-reported symptoms and how he arrived at the conclusion that they had both been incapable of forming any requisite criminal intention.[95]

(v) Dr Tan's assessment of the symptoms exhibited by Michael and Lye Choon were inconsistent with the objective evidence. In the case of Michael, Dr Tan conceded during cross-examination that Michael had situational awareness, control over his actions and rational thought as demonstrated by his ability to voluntarily de-escalate the level of violence after the arrival of the police officers. Therefore, it could not be said that Michael had no capacity at all to form the requisite criminal intent. In the case of Lye Choon, Dr Tan conceded during cross-examination that the objective evidence and findings of fact made at the end of trial pointed to a conclusion that Lye Choon should have had a certain level of awareness and intention when he had engaged in violence. Dr Tan's final position was only that Lye Choon had not been capable of forming the *full* requisite criminal intent.[96]

(vi) Dr Tan appeared to have misconstrued his role as an expert witness, given that he came across as being somewhat partisan and lacking in objectivity.[97]

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95 Supplementary ROP at p 341: The DJ's Remittal GD at [39].

96 Supplementary ROP at pp 341 to 343: The DJ's Remittal GD at [40] to [41].

97 Supplementary ROP at pp 343 to 345: The DJ's Remittal GD at [42] to [45].

(b) In contrast, the DJ preferred the evidence of Dr Mak and Dr Guo as he found their evidence to be cogent, based on objective evidence and based on sound analytical processes:[98]

(i) Dr Mak and Dr Guo did not rely only on the accounts provided by Michael and Lye Choon. Rather, they took into account objective facts which had been proven and established at trial. In the case of Michael, Dr Mak considered other sources of evidence, including the DJ's GD and the Statement of Facts for the Disorderly Behaviour Charge to which Michael had pleaded guilty. This was primarily because Michael's account was that he could not recall in detail the events that had occurred. In the case of Lye Choon, Dr Guo adopted a similar approach, considering the findings of fact made by the DJ in the DJ's GD, given that Lye Choon had stated that he could not remember the exact details of the events at the Carpark.[99]

(ii) The evidence of Dr Mak and Dr Guo were also cogent. Dr Mak's analysis of whether Michael's condition affected his ability to form a criminal intention was based on a clear set of criteria. Dr Mak also referred to the key pieces of evidence which supported his analysis. Similarly, Dr Guo's view that Lye Choon had been conscious of what he had done and would have had clear intentions was supported by academic authority.[100]

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98 Supplementary ROP at pp 345 to 348: The DJ's Remittal GD at [46] to [54].

99 Supplementary ROP at pp 347 to 348: The DJ's Remittal GD at [53].

100 Supplementary ROP at p 348: The DJ's Remittal GD at [54].

(c) Ultimately, based on the evidence adduced at the remittal hearing, the DJ found that Michael and Lye Choon had not been so intoxicated that they could not have formed the necessary criminal intent. The evidence supported the DJ's finding made following the trial that the Appellants had shared a common object to hurt the Victims, and each one of them had been an active participant in causing hurt to one or more of the Victims.[101]

(d) The DJ also rejected the argument advanced by Michael and Lye Choon at the remittal hearing that they had been unaware of what Regina had done. The DJ noted that this was not the defence advanced by Michael and Lye Choon at trial. This new defence was clearly an afterthought. The evidence adduced at trial also showed that Michael and Lye Choon had been aware of what had been happening at the Carpark at the time they had gotten involved.[102]

The parties' cases on appeal

68 I next set out briefly the parties' cases on appeal. As a result of my decision to allow the Appellants' appeals against conviction (see [7] above), their appeals against sentence in relation to the Rioting Charge did not have to be considered. Accordingly, I do not find it necessary to set out the Appellants' arguments in relation to their appeals against sentence with respect to the Rioting Charge.

69 However, as Michael appealed against the sentence imposed for the Disorderly Behaviour Charge to which he had pleaded guilty, and Wan Seng

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101 Supplementary ROP at p 349: The DJ's Remittal GD at [55] to [56].

102 Supplementary ROP at pp 350 to 351: The DJ's Remittal GD at [58] to [59].

appealed against the sentence imposed for the Offensive Weapon Charge to which he had pleaded guilty, it is necessary for me to also set out their arguments in relation to their appeals against the sentences imposed for those charges.

Michael and Lye Choon's case

70 Michael and Lye Choon, who were both represented by the same set of counsel on appeal, raised the following arguments in relation to their appeals against conviction:

(a) First, they argued that the DJ had erred in preferring the Victims' evidence over the Appellants'. In particular, they argued that the DJ had erred in finding that the Appellants had all been identified by the Victims. According to Michael and Lye Choon, the DJ had erred in finding that that Meng Chong had been identified as one of the assailants beyond a reasonable doubt. On the footing that Meng Chong had *not* been identified as one of the assailants beyond a reasonable doubt, Michael and Lye Choon argued that the DJ had erred in finding that the Rioting Charge (which had to necessarily encompass all *five* of the Appellants in order to constitute an unlawful assembly) was made out.[103]

(b) Second, in relation to the DJ's decision following the remittal hearing, Michael and Lye Choon argued that the DJ had erred in preferring the expert evidence adduced by the Prosecution (*ie*, the evidence of Dr Mak and Dr Guo) over the evidence of Dr Tan.[104]

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103 Written Submissions of Michael and Lye Choon dated 21 June 2023 in relation to their appeals again conviction ("Submissions of Michael and Lye Choon on appeal against conviction") at paras 37 to 74.

104 Submissions of Michael and Lye Choon on appeal against conviction at paras 6 to 11.

(c) Third, Michael and Lye Choon submitted that the DJ had erred by failing to consider the totality of the expert evidence, which would have led to the conclusion that, on a balance of probabilities, both Michael and Lye Choon had been unaware of the incident involving Regina, Maureen and Sreelatha. In the alternative, they argued that there remained reasonable doubt over whether Michael and Lye Choon had been aware of the incident involving Regina, Maureen, and Sreelatha. Therefore, in both situations, there could not have been a common object among the Appellants to cause hurt to the Victims.[105]

71 In relation to Michael's appeal against the sentence imposed for the Disorderly Behaviour Charge, Michael argued that the sentence of two weeks' imprisonment was manifestly excessive in light of sentencing precedents.[106]

Meng Chong's case

72 Meng Chong made the following arguments in relation to his appeal against conviction:

(a) First, the DJ erred in preferring the Victims' evidence over the Appellants', and in finding that Meng Chong had been identified as one of the assailants beyond a reasonable doubt.[107]

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105 Submissions of Michael and Lye Choon on appeal against conviction at paras 12 to 32.

106 Written Submissions of Michael and Lye Choon dated 26 June 2023 in relation to their appeals again sentence ("Submissions of Michael and Lye Choon on appeal against sentence") at paras 18 to 29.

107 Written Submissions of Meng Chong dated 21 June 2023 ("Meng Chong's 21 June Submissions") at paras 6 to 27.

(b) Second, the DJ erred by failing to direct his mind to the issue of whether the Appellants shared a common object to cause hurt to the Victims. According to Meng Chong, the assault on George was distinct from the assaults against the remaining Victims. Seen in this light, it could not be said that there were at least five persons who shared a common object to cause hurt to the Victims.[108]

Wan Seng's case

73 Wan Seng made the following arguments in relation to his appeal against conviction:

(a) First, the DJ erred in preferring the Victims' evidence over the Appellants'. Instead, Wan Seng submitted that he had not kicked George or used the baton to hit George.[109]

(b) Second, the DJ erred in finding that the elements of the Rioting Charge were satisfied. In particular, Wan Seng argued that Meng Chong and Wan Seng had not been part of an unlawful assembly of five or more persons. Further, there was no common object among the Appellants to cause hurt to the Victims. Wan Seng also did not use any force or violence.[110]

74 In relation to Wan Seng's appeal against the sentence imposed for the Offensive Weapon Charge, Wan Seng argued that the sentence of three months'

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108 Meng Chong's 21 June Submissions at paras 28 to 35.

109 Written Submissions of Wan Seng dated 21 June 2023 ("Wan Seng's 21 June Submissions") at paras 49 to 95.

110 Wan Seng's 21 June Submissions at paras 25 to 48.

imprisonment was manifestly excessive, and an imprisonment term not exceeding one month ought to have been imposed.[111]

Regina's case

75 Regina made the following arguments in relation to her appeal against conviction:

(a) First, the DJ erred in preferring the Victims' evidence over the Appellants'. Instead, Regina submitted that she had not initiated the assault on Maureen. Rather, she acted in self-defence after Maureen pulled her hair. Further, Regina did not cause hurt to Sreelatha.[112]

(b) Second, the DJ erred in finding that the elements of the Rioting Charge were satisfied. In particular, Regina submitted that the DJ's GD was silent on how the DJ had arrived at his decision that the Appellants had constituted an unlawful assembly with a common object to cause hurt to the Victims. Further, there was no evidence relating to the Appellants forming a common object. Rather, the evidence suggested that the fight in the present case comprised separate incidents at the Carpark which had arisen spontaneously, without the Appellants possessing a common object.[113]

The Prosecution's case

76 In its written submissions, the Prosecution argued the following:

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111 Wan Seng's 21 June Submissions at paras 107 to 112.

112 Written Submissions of Regina dated 21 June 2023 ("Regina's 21 June Submissions") at paras 74 to 104.

113 Regina's 21 June Submissions at paras 27 to 73.

(a) The DJ made no error in his treatment of the evidence of the Victims and the Appellants in the court below. The DJ correctly found the Victims' collective evidence to be consistent and credible. In contrast, the evidence of the Appellants and the Appellants' witness, Benny, was not credible.[114]

(b) In relation to the findings made following the remittal hearing, the DJ rightly preferred the expert opinions of Dr Mak and Dr Guo. The DJ made no error, therefore, in finding that the additional evidence at the remittal hearing had no effect on the DJ's earlier verdict to convict Michael and Lye Choon of their respective Rioting Charges.[115]

77 However, the Prosecution failed to address a key aspect of the Appellants' arguments on appeal in its written submissions – whether the DJ had applied his mind to the issue of whether there had been a common object among the Appellants to cause hurt to the Victims and, if so, whether the DJ had correctly found that the evidence supported the finding of a common object. In view of this, I directed the parties ahead of the hearing on 19 July 2023 to prepare oral submissions on this issue. At the hearing, the Prosecution made the following submissions in support of its position that there was a common object among the Appellants to cause hurt to the Victims:

(a) The evidence showed that the Appellants had been aware of the incident between Michael and Daniel near Lot 42.

(b) While the Appellants took the position that the events which had occurred at the Carpark on 1 May 2017 were three separate incidents,

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114 Written Submissions of the Prosecution dated 21 June 2023 ("Prosecution's 21 June Submissions" at paras 55 to 78.

115 Prosecution's 21 June Submissions at paras 35 to 54.

this was not an accurate characterisation of what had occurred. According to the Prosecution, Michael *initiated* the violence by kicking the Car at Lot 42. This led to a *domino effect*: (i) first, Daniel alighted from the Car, told Michael to stop kicking the Car and was then assaulted by Michael and, later, various unknown persons; (ii) second, when George alighted from the Car to speak to Michael near Lot 55, he was assaulted by Wan Seng, Lye Choon, Meng Chong and Michael; and (iii) third, when Maureen ran towards George as she saw him being assaulted, Regina assaulted Maureen and, subsequently, Sreelatha. Therefore, these were not three separate incidents. Rather, the evidence showed that the violence commenced with Michael's kicking of the Car and progressed with the Appellants behaving aggressively.

(c) The Appellants did not dissociate themselves from Michael's violence towards Daniel at Lot 42. Rather, they actively participated in the violence. The reasonable inference from this was that they were aware that George was part of Daniel's group and wanted to be associated with Michael's violence towards Daniel.

(d) The post-offence conduct of the Appellants showed that they had wanted to escape, further pointing to their guilt.

(e) For an offence under s 147 of the Penal Code, there was no requirement to find a *common intention* among the Appellants. All that was required was a *common object*. This meant that there was no requirement of a prior meeting of the minds before the formation of the assembly. An unlawful common object could have developed suddenly and on the spot, after the Appellants gathered at the incident location. Accordingly, an assembly which was lawful at its inception could still convert into an unlawful assembly as a result of the actions of its

members. On the facts, there was enough evidence to support a finding that there had been a common object among the Appellants to cause hurt to the Victims.

(f) Even if this Court disagreed with the Prosecution's position that the incidents which had taken place near Lot 55 (*ie*, the incident where hurt was caused to George by Wan Seng, Lye Choon, Meng Chong and Michael) and Lots 57 and 58 (*ie*, the incident where hurt was caused to Maureen and Sreelatha by Regina) were a continuation of the initial assault of Daniel by Michael near Lot 42, the Prosecution alternatively suggested that the Rioting Charge would still have been made out against the Appellants simply by focusing just on the incidents which took place near Lot 55 and Lot 57 and Lot 58. These two incidents occurred concurrently and involved all the Appellants causing hurt to three of the Victims. This would still have amounted to an unlawful assembly involving all the Appellants with a common object to cause hurt to three of the Victims.

Issues which arose for determination

78 The following issues arose for determination in light of the Appellants' cases on appeal:

(a) Issue 1: Whether the DJ had erred in preferring the Victims' evidence over the Appellants' evidence. As part of my analysis, I considered the arguments by the Appellants in relation to specific findings of fact made by the DJ on the events which occurred at the Carpark.

(b) Issue 2: Whether the DJ had erred in finding that the Appellants had been members of an unlawful assembly *whose common object had been to voluntarily cause hurt to the Victims*.

(c) Issue 3: Whether the DJ had erred in his treatment of the expert evidence at the remittal hearing, and whether the DJ therefore erred in finding that Michael and Lye Choon had not been so intoxicated that they could not have formed the necessary criminal intent.

(d) Issue 4: In the event this Court agreed with the Appellants that the DJ had had erred in finding that the Rioting Charge had been made out against each Appellant, whether this Court should frame altered charges against the Appellants based on the facts proven in the court below and the appropriate sentences if altered charges are framed against the Appellants.

(e) Issue 5: Whether the sentences imposed for the Disorderly Behaviour Charge and the Offensive Weapon Charge were manifestly excessive.

My decision

Issue 1: Whether the DJ had erred in preferring the Victims' evidence over the Appellants' evidence

79 I first considered whether the DJ had erred in preferring the Victims' evidence over the Appellants' evidence. A summary of the DJ's reasons for finding that the evidence of the Victims was materially consistent and credible is set out at [39] above, while a summary of the DJ's reasons for finding that the evidence of the Appellants was not credible is set out at [40] above.

80 From the record, it was clear that the DJ had carefully analysed the evidence and the testimonies of the Victims as well as the Appellants and their witness, Benny. It was clear to me that the findings made by the DJ were not plainly wrong or against the weight of the evidence so as to warrant appellate intervention: see *Public Prosecutor v Mohammed Liton Mohammed Syed Mallik* [2008] 1 SLR(R) 601 at [32]. Therefore, I saw no reason to disturb the findings of fact made by the DJ in relation to how the events had unfolded at the Carpark on 1 May 2017 and how the Appellants had been involved in the incidents of violence against the Victims.

81 I make a few observations in response to some of the Appellants' contentions which I rejected:

(a) First, it was clear to me that the Victims had been able to clearly identify each of the Appellants and their involvement in the events at the Carpark *to the extent that they had observed what had occurred*. Here, I emphasise that the Victims were candid in stating that they had not observed certain events at the Carpark. For example, George was unaware of who assaulted him near Lot 55 after he fell down as he felt giddy and was unable to get up.[116] This showed that the Victims had been frank and forthcoming and were not seeking to falsely implicate the Appellants.

(b) Second, while there were inconsistencies in the testimonies of the Victims, these were either minor or immaterial. As was clear from the DJ's GD, the DJ was alive to the inconsistencies in the Victims' testimonies. He considered, however, that these inconsistencies could be

116 ROP at pp 182 to 183: Notes of Evidence ("NE") for 4 January 2019 at p 21, line 13 to p 22, line 26.

attributed to memory lapses or were, ultimately, immaterial.[117] I fully agreed with his analysis in this regard.

(c) Third, a number of the Appellants argued that the DJ had erred, in particular, in finding that Meng Chong had been identified as one of the assailants beyond a reasonable doubt.[118] I saw no merit in this argument. It was undisputed that Maureen was the main witness who identified Meng Chong as being involved in the assault on George near Lot 55. The Appellants pointed to the fact that George himself had been unable to identify who had assaulted him near Lot 55. The Appellants also pointed to the fact that Maureen had identified Meng Chong as the "taller guy" when, in fact, Lye Choon was taller than Meng Chong.[119] This conveniently ignored the fact, however, that Maureen's identification of Meng Chong was not based *solely* on his height. Rather, the record clearly showed that Maureen's identification of the individuals who had assaulted George near Lot 55 was based on the tattoos which they had or did not have – Wan Seng had a tattoo on the left side of his neck, and Lye Choon had a tattoo on the right side of his neck. While Maureen remembered Meng Chong as the "taller guy", she also remembered him as the individual *without* tattoos on his neck.[120] She explained how she was able to witness the assault clearly, given that there was a lamppost where the assault occurred.[121] While Maureen's

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117 ROP at pp 869 to 870: The DJ's GD at [30] to [31].

118 Submissions of Michael and Lye Choon on appeal against conviction at paras 37 to 74; Meng Chong's 21 June Submissions at paras 6 to 15; Wan Seng's 21 June Submissions at paras 29 to 33.

119 For example, see Submissions of Michael and Lye Choon on appeal against conviction at para 73(c).

120 ROP at p 66: NE for 3 January 2019 at p 13, lines 12 to 14.

121 ROP at p 70: NE for 3 January 2019 at p 17, lines 14 to 30.

evidence may not have been corroborated by the other Victims, her evidence was not inconsistent with theirs. George stated that there had been at least two people assaulting him. Sreelatha was aware that George was being assaulted but could not see *who* was assaulting him. Daniel only stated that that he did not notice if anyone was hitting George. None of the other Victims' evidence contradicted the evidence of Maureen.

(d) Fourth, Wan Seng argued that the DJ had erred in finding that he had used the baton to hit George. Wan Seng asserted at the appeal that it was George's own evidence that Wan Seng had not used the baton on George. Rather, according to Wan Seng, George's evidence was that he had only observed Wan Seng holding the baton and tapping the baton on his own hand.[122] In my view, this was a mischaracterisation of George's evidence. While George had indeed given evidence on Wan Seng's conduct (of tapping the baton on his own hand), this evidence related to Wan Seng's conduct when George had initially walked past Wan Seng while proceeding towards Lot 55. In relation to the assault near Lot 55, however, the record clearly showed that George was *unaware* of who had assaulted him. Therefore, George had given *no evidence* on whether the baton had been used to hit him. Rather, it was Maureen who gave clear, consistent evidence that Wan Seng had used the baton to hit George. While Wan Seng claimed that Maureen had embellished her evidence, in my view, he did not substantiate this claim in any way. Therefore, I rejected this contention by Wan Seng.

(e) Fifth, the DJ made no error in finding that the evidence of the Appellants lacked credibility:

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122 Wan Seng's 21 June Submissions at paras 68 to 73.

(i) In the case of Michael, his defence at the trial was simply a bare denial on the basis that he had been too drunk to remember the events at the Carpark. This was incredible, given that he was able to remember in specific detail what had occurred shortly before he had arrived at the Carpark, including that he had settled the bill and asked for his credit card to be returned. Further, his investigative statement recorded on the day of his arrest showed that he had remembered much more than he claimed to remember at trial. In the circumstances, the DJ did not err in rejecting Michael's defence.

(ii) In the case of Lye Choon, his defence at the trial was also simply a bare denial on the basis that he had been too drunk to remember the events at the Carpark. This was similarly incredible, since the evidence of the other Appellants, including Wan Seng and Regina, showed that Lye Choon had been fully conscious and aware of what was going on shortly before the events at the Carpark. He was able to point to where he had parked his e-scooter and was able to ask Wan Seng to retrieve his e-scooter for him. He was also able to somehow remember events which had occurred after the events at the Carpark, including that he had walked to a police station and asked the police officers to allow him to leave so he could go to work the next day. Finally, the evidence of the co-Appellants showed that Lye Choon had proceeded towards the commotion at the Carpark. In the circumstances, the DJ did not err in rejecting Lye Choon's defence.

(iii) In the case of Meng Chong, his defence at trial was that he had not been involved in the violence at the Carpark as he,

together with Benny, was taking care of Lye Choon. However, he was positively identified by Maureen as one of the individuals who had assaulted George near Lot 55. Further, as was pointed out by the Prosecution in its written submissions, Meng Chong's defence was contradicted by his own and Benny's investigative statements. In his investigative statement, Meng Chong stated that he and Benny had accompanied Lye Choon as Lye Choon walked towards the commotion. Benny also stated in his investigative statement that he and Meng Chong had tried to separate Wan Seng, Regina, and Michael. In the circumstances, the DJ did not err in rejecting Meng Chong's defence.

(iv) In the case of Wan Seng, his defence at trial was that he had held the baton for self-defence, and that he had not assaulted the Victims. Rather, he tried to stop the fight. However, his evidence at trial that four or five persons surrounded Michael was inconsistent with his investigative statement where he had stated that Michael had fought with just one individual. When confronted with this at trial, he alleged that the statement recorder had deliberately chosen not to write down about those four or five persons who had surrounded Michael. This was, however, contradicted by the evidence of the statement recorder who had no reason to lie. In the circumstances, the DJ did not err in rejecting Wan Seng's defence.

(v) In the case of Regina, I was of the view that the DJ had not erred in rejecting Regina's defence that she had acted in self-defence. Her testimony that Maureen had hit her first was contradicted by the testimony of the statement recorder. The statement recorder clearly stated that Regina had not informed

> him that she had sustained any injuries as a result of the events at the Carpark. Further, her account of her actions in self-defence shifted from touching or pushing Maureen to swinging her arm to block Maureen. This pointed to the conclusion that Regina's defence was not truthful. In the circumstances, the DJ did not err in rejecting Regina's defence.

82 Given the above, I saw no reason to disturb the findings of fact made by the DJ on the events at the Carpark on 1 May 2017 as well as how the Appellants had each been involved in the incidents of violence at the Carpark.

Issue 2: Whether the DJ had erred in finding that the Appellants had been members of an unlawful assembly whose common object had been to voluntarily cause hurt to the Victims

83 I next considered whether the DJ had erred in finding that there had been a common object among the Appellants to voluntarily cause hurt to the Victims.

The law on common object

84 I first summarise the key principles relating to the finding of a common object. These were set out by Yong Pung How CJ (as he then was) in *Lim Thiam Hor and another v Public Prosecutor* [1996] 1 SLR(R) 758 (at [13]) and were restated in *Pannirselvam s/o Anthonisamy v Public Prosecutor* [2005] 1 SLR(R) 784 (at [35]):

> (a) The existence of a common object is a question of fact which must be deduced from the facts and circumstances of each case.
>
> (b) Such an inference may be made based on a consideration of the nature of the assembly, the weapons used by the accused persons and the behaviour of the assembly at or before the scene of occurrence.

(c) While the mere presence in an assembly of persons does not render an accused a member of the unlawful assembly, there is no need to prove an overt act against the accused so long as there is direct or circumstantial evidence to show that the accused shared the common object of the assembly. In every case, the issue of whether an accused was innocently present at the place of occurrence or whether he was actually a member of the unlawful assembly is a question of fact.

(d) It is essential that the object should be common to the persons who constitute the assembly, and they should be *aware of it* and *concur in it*.

The DJ failed to consider whether there had been a common object among the Appellants to cause hurt to the Victims

85 Before considering the issue of whether the evidence supported a finding that there had been a common object among the Appellants to cause hurt to the Victims, I noted that the DJ had failed to even *consider the issue* of whether there had been a common object among the Appellants to cause hurt to the Victims. Rather, the DJ proceeded on the basis that there was only one issue to be determined:[123]

> *Issue before the court*
>
> 28 The issue before the court was largely a factual one, whether the collective testimony given by the four victims was credible and proved the prosecution's case of the occurrence of the riot beyond a reasonable doubt, or whether their testimony was undermined by the testimonies of the defence witnesses which raised a reasonable doubt.

123 ROP at p 869: The DJ's GD at [28].

86 Further, in its submissions in the court below, the Prosecution merely asserted that each of the Appellants had shared a common object to cause hurt to the Victims, without properly addressing whether the evidence supported such a finding of fact.[124]

87 This was regrettable. Whether there was a common object among the Appellants to cause hurt to the Victims was clearly *fundamental* to the Rioting Charge. Therefore, close attention should have been paid to this issue in assessing whether the Rioting Charge was made out against each Appellant.

88 This was especially crucial given that this was not a case where the Appellants had collectively assaulted *one* victim. Rather, as I have set out at [21] to [30] above, the events which occurred at the Carpark on 1 May 2017 involved three incidents of violence at *different* areas of the Carpark, with each act of violence involving only a *few* of the Appellants and *just one or two* of the Victims. In other words: (a) all five of the Appellants did not collectively cause hurt to any one of the Victims; and (b) each Appellant did not cause hurt to *all four* of the Victims. Further, this was also not a case where the Victims had all been assaulted at once, with one of the Appellants commencing the assault and the co-Appellants participating in the assault thereafter. Rather, the assault on the Victims took place at *different points of time* in *different areas of the Carpark*.

89 However, because of the framing of each Rioting Charge, the Prosecution sought to hold each Appellant liable for the hurt caused to all four of the Victims. The reason for such framing was obvious – for there to be an unlawful assembly, there must have been *five* persons involved. However, for

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124 ROP at pp 999 to 1000 and 1018: PCS at paras 30, 32 and 65.

liability to be imputed to the Appellants for the hurt caused to all four Victims, it should have been plainly obvious that a finding must first have been made as to whether there was even a common object among *all* the Appellants to cause hurt to *all* the Victims.

The evidence did not support a finding that there had been a common object among the Appellants to cause hurt to the Victims

90 Having reviewed the record on appeal, I found that the evidence did not support a finding that there had been a common object among the Appellants to cause hurt to the Victims.

91 As summarised at [77] above, the Prosecution's case was that the three incidents of violence at the Carpark ought to be viewed as a continuing series of violence which had been initiated by Michael's kicking of the Car at Lot 42. Further, the Prosecution asserted that, because the Appellants had been aware of the incident involving Michael and Daniel at Lot 42, it could be inferred that they had a common object to cause hurt to the Victims. This was because they had *failed to dissociate* from Michael's act of violence at Lot 42 and, instead, had actively participated in the violence against the other Victims. This, to me, raised a number of issues.

(1) Given the manner in which the Rioting Charge was framed, the Appellants must have had a common object to cause hurt to Daniel near Lot 42

92 The first glaring issue arose from the fact I highlighted at [89] above that the Prosecution's charge had been framed in a manner which required the Appellants to have had a common object to cause hurt to *all four* of the Victims. This necessarily meant that, when Daniel had been assaulted by Michael near Lot 42 soon after Michael kicked the Car, the Appellants must have had a

common object for hurt to be caused to Daniel. This was crucial, given that Daniel had not been assaulted again by any of the co-Appellants after he had been assaulted by Michael near Lot 42.

93 In my view, the evidence did not in any way support a finding that the Appellants had a common object to cause hurt to Daniel near Lot 42 for the following reasons:

(a) According to the Prosecution's own case, Michael's act of kicking the Car at Lot 42 and his subsequent assault on Daniel was *the start of a domino effect* of violence at the Carpark (see [77(b)] above). Nowhere in the Prosecution's case was there an assertion that *all five* of the Appellants had a common object to cause hurt to Daniel *before* Michael had commenced his assault on Daniel.

(b) On the contrary, the evidence showed that the assault by Michael on Daniel had been spontaneous and had arisen in response to Daniel alighting from the Car after Michael had kicked the Car at Lot 42. In such a spontaneous situation which did not involve the co-Appellants, how could the Appellants have formed a common object to cause hurt to Daniel in the time between Michael kicking the Car and Michael assaulting Daniel? This was not addressed by the Prosecution.

(c) Further, an added complication in this case was that the assault on Daniel was limited only to the incident at Lot 42. Thereafter, none of the Appellants were involved in assaulting Daniel in any way. How, then, could the Appellants have formed a common object to cause hurt to Daniel? No direct or circumstantial evidence which addressed this issue was adduced in the court below. At the appeal, the Prosecution also failed to account for how such a finding could be made. While the

Prosecution pointed to evidence which showed that the other Appellants had *subsequently* become aware of the assault by Michael on Daniel near Lot 42, this did not allow this Court to make an inference that they had a common object to cause hurt to Daniel *at the time Daniel had been assaulted by Michael*. In my view, for liability to be imposed vicariously on the co-Appellants for the hurt caused by Michael to Daniel, the Prosecution needed to show that there had been a common object among the Appellants to cause hurt to Daniel *at the time Daniel was assaulted by Michael*. This was not proven.

(2) Even if the Prosecution's alternative position was considered, the evidence still did not support a finding of a common object among the Appellants to cause hurt to George, Maureen and Sreelatha

94 It appeared from the Prosecution's oral submissions at the hearing on 19 July 2023 that the Prosecution recognised this difficulty in its case. This perhaps explained why the Prosecution presented an alternative position at the appeal: the Prosecution argued that the Rioting Charge would still be made out even if consideration of the hurt caused to Daniel near Lot 42 was omitted, and this Court only considered the following two incidents of violence:

(a) the incident which took place near Lot 55 (*ie*, the incident where hurt was caused to George by Wan Seng, Lye Choon, Meng Chong and Michael); and

(b) the incident which took place near Lot 57 and Lot 58 (*ie*, the incident where hurt was caused to Maureen and Sreelatha by Regina).

95 The Prosecution took the position that it could at least be inferred from these two incidents that the Appellants had a common object to cause hurt to three of the Victims, *ie*, George, Maureen, and Sreelatha.

96 Putting aside that this was inconsistent with the Rioting Charge as originally framed by the Prosecution, this alternative position appeared attractive at first blush, since the events occurred *concurrently.* Further, the DJ found in the court below that Regina had been aware of the incident occurring near Lot 55 (*ie*, the incident where hurt was caused to George by Wan Seng, Lye Choon, Meng Chong and Michael) when she had first assaulted Maureen.[125]

97 However, upon closer scrutiny, this alternative position ignored a second glaring issue. Regina may have been aware of the incident which took place near Lot 55 when she had commenced her assault on Maureen and Sreelatha. But what was the evidence which supported a finding that *Wan Seng, Lye Choon, Meng Chong and Michael were aware of the incident near Lot 57 and Lot 58* involving Regina, Maureen and Sreelatha? In order to find a common object among the Appellants to cause hurt to George, Maureen and Sreelatha, the Appellants must have at least been aware that hurt was being caused to each of the Victims. On the Prosecution's own case, the two incidents occurred *concurrently* (see [77(f)] above). No evidence was adduced to specifically address the question of whether Wan Seng, Lye Choon, Meng Chong, and Michael had been aware of the incident near Lot 57 and Lot 58 involving Regina, Maureen and Sreelatha at the time of the assault.

98 I noted that, according to the expert evidence adduced during the remittal hearing, some suggestion was made that Michael and Lye Choon *could have been aware* of what was happening eight metres away from them (*ie*, the incident near Lot 57 and Lot 58 involving Regina, Maureen, and Sreelatha) despite their intoxication. This, however, did not amount to direct or circumstantial evidence that Wan Seng, Lye Choon, Meng Chong, and Michael

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125 ROP at pp 880 to 881: The DJ's GD at [63].

had, *in fact*, been aware of the incident. In the absence of such evidence, no inference could be made that there had been a common object among the Appellants to cause hurt to George, Maureen, and Sreelatha.

The Rioting Charge was therefore not made out against each Appellant

99 What was patently clear to me from the glaring issues set out above was that the evidence did not support an inference being drawn of a common object among the Appellants to cause hurt to *all four* of the Victims.

100 Even if the alternative position of the Prosecution were accepted, there must have been a common object among the Appellants to cause hurt to *three* of the Victims, *ie*, George, Maureen, and Sreelatha. Given the manner in which the assaults occurred, not all the Appellants were involved in or even aware of the assaults against each of the Victims. This, therefore, created a significant gap which prevented this Court from inferring that there had been a common object among the Appellants to cause hurt to the Victims (whether it concerned all *four* of the Victims or just *three* of the Victims).

101 For the reasons above, I could not accept the Prosecution's position that the evidence supported a finding that there had been a common object among the Appellants to cause hurt to the Victims. In my view, the evidence did not lead to an irresistible inference of such a common object.

102 Given the lack of a common object, I found that the DJ had erred in finding that the Rioting Charge had been made out against each Appellant. I hence allowed the Appellants' appeals against conviction in relation to the Rioting Charge.

Issue 3: Whether the DJ had erred in his treatment of the expert evidence at the remittal hearing

103 Consequent upon my finding on Issue 2, it was unnecessary for me to consider the DJ's findings pertaining to the expert evidence adduced at the remittal hearing addressing whether Michael and Lye Choon were so intoxicated that they could not form the necessary criminal intent. Nonetheless, for completeness, I considered whether the DJ had made any errors in his treatment of the expert evidence.

104 Having reviewed the DJ's grounds of decision following the remittal hearing as well as the parties' submissions, I disagreed with Michael and Lye Choon's argument that the DJ had erred in his treatment of the expert evidence. I briefly explain below.

The DJ did not err in finding that Dr Tan's evidence was not cogent

105 In my view, the DJ did not err in finding that Dr Tan's evidence was not cogent for two key reasons:

(a) First, Dr Tan relied *solely* on the self-reported accounts of Michael and Lye Choon. While Dr Tan initially stated that he had reviewed, or more accurately, "skim[med] through"[126] the Record of Proceedings, Dr Tan was unable to identify exactly which documents he had referred to. Instead, he stated that what was more important was his own examination of Michael and Lye Choon. I set out below an exchange during the remittal hearing which illustrated Dr Tan's position

126 Supplementary ROP at p 71: NE for 3 August 2022 at p 62, line 4.

on the importance, *or lack thereof*, on relying on independent information:[127]

> Q Now, to be fair, Dr Tan, I'm not asking you to remember everything that is found in these 37 pages of the grounds of decision. I'm just asking whether you remember having reviewed these grounds of decision before coming to your opinions for [Michael] and [Lye Choon].
>
> A Okay. I---if I had read it, *what is important also is who is in front of me and the history I have taken. So, I'm just asking you maybe can you sort of help me understand the point of this affecting my judgment.*
>
> Q So, let me unpack that a bit. You are saying that even if you had read the grounds of decision, what is more important to you is the patient sitting in front of you and the history that the patient provides to you. Is that correct?
>
> A You see, what---what is interesting, I guess, about this, is that this is appeal. So, I mean, I understand that there is information inside also, but *my opinion is also something that is fresh. Okay, let me put it---in another sense is that my opinion is being sought, because is there a possibility of another consideration, if you understand what I'm saying?*
>
> Q I need you to answer my question first. Is---are you saying that what is more important to you is the testimony or the account given by the patient before you?
>
> A Okay, that is very unfair question, because to me, I find that when you see a patient, there is information you gather. Yes, there's information here also. *But what I am also deeply aware is that there's also opinion that's---that people sought out or---he lawyer wrote to me and they seek out a diff---maybe is there another possibility, another opinion that might change or that might, you know---or should have been taken into consideration?* And this is where my stand is. So---so, everything would be taken into consideration as much as possible. *But I also want to give an idea that, you know, is there something else that's not considered?*

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127 Supplementary ROP at pp 72 to 73: NE for 3 August 2022 at p 63, line 9 to p 64, line 9.

[emphasis added]

In my view, the exchange above seemed to suggest that Dr Tan failed to appreciate the importance of considering independent evidence. Instead, Dr Tan appeared to maintain that his assessment had been correctly based primarily on the accounts of Michael and Lye Choon, so as to present "another possibility" that ought to "have been taken into consideration". In *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805, Sundaresh Menon CJ stated that less weight should be placed on an expert report which was entirely predicated on the truthfulness of the information provided by an accused person without relying on any independent information (at [21] and [24]). Therefore, the DJ made no error in finding that Dr Tan's sole reliance on the self-reported accounts of Michael and Lye Choon affected the cogency of his evidence. Further, as the DJ found, if Dr Tan had considered the independent evidence, this would have allowed him to prepare a better report (see [67(a)(iii)] above). This much was conceded by Dr Tan during cross-examination at the remittal hearing as well.[128]

(b) Second, Dr Tan gave no explanation of how he had been able to estimate the blood alcohol concentration levels of Michael and Lye Choon by backward extrapolation based on their self-reported symptoms. Further, Dr Tan also did not explain in his reports how he arrived at the conclusion that they had both been incapable of forming the requisite criminal intention simply based on their estimated blood alcohol concentration levels. Indeed, as the DJ found[129] and as the

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128 Supplementary ROP at p 96: NE for 3 August 2022 at p 87, lines 1 to 10.

129 Supplementary ROP at pp 341 to 343: The DJ's Remittal GD at [40].

Prosecution highlighted in its written submissions on appeal,[130] Dr Tan had made significant concessions in relation to his finding that Michael and Lye Choon had both been incapable of forming the requisite criminal intention. These concessions were made after he was pointed to various pieces of evidence which showed that both Michael and Lye Choon had retained some level of awareness and control over their actions.

The DJ did not err in preferring the evidence of Dr Mak and Dr Guo

106 Further, the DJ did not err in preferring the evidence of Dr Mak and Dr Guo for the following reasons:

(a) First, unlike Dr Tan, both Dr Mak and Dr Guo considered more than just the accounts of Michael and Lye Choon, including other forms of evidence such as the DJ's GD and the Statement of Facts in relation to Michael's Disorderly Behaviour Charge. Accordingly, their medical opinions were based on the totality of the evidence. While I considered Michael and Lye Choon's contention that Dr Mak and Dr Guo had similarly failed to thoroughly review the other pieces of evidence,[131] I ultimately rejected this contention. While both Dr Mak and Dr Guo may not have reviewed the *entire* Record of Proceedings, the evidence made clear that they had at least looked beyond the accounts of Michael and Lye Choon, and considered some independent evidence. The same could not be said of Dr Tan who had been unable to substantiate his bare assertion that he had *skimmed through* the Record of Proceedings.

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130 Prosecution's 21 June Submissions at paras 44 and 45.

131 Submissions of Michael and Lye Choon on appeal against conviction at paras 9 to 10.

(b) Second, and more significantly, both Dr Mak and Dr Guo clearly set out the basis of their conclusions. In the case of Michael, Dr Mak assessed Michael's mental state on the basis of three objective criteria – awareness, control and his understanding of the rightness and wrongness of his actions. In the case of Lye Choon, Dr Guo explained how his finding that Lye Choon's alcohol-induced amnesia did not affect his consciousness and ability to form a criminal intention was supported by academic authority. As the Prosecution highlighted in its written submissions, Dr Tan had agreed, as a general principle, with Dr Guo's conclusion that alcohol-induced amnesia did not necessarily mean that an offender would have been unable to form a criminal intention.[132]

The DJ did not err in finding that Michael and Lye Choon had not been so intoxicated that they could not form the necessary criminal intention for the Rioting Charge

107 Ultimately, given the evidence adduced at the remittal hearing, and my finding that the DJ had not erred in preferring the evidence of Dr Mak and Dr Guo over Dr Tan's, I found that the DJ had not erred in finding that Michael and Lye Choon had not been so intoxicated such that they could not have formed the necessary criminal intention for the Rioting Charge. However, I ultimately found under Issue 2 that the DJ had erred in finding that there had been a common object among the Appellants to voluntarily cause hurt to the Victims.

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132 Supplementary ROP at pp 130 to 131: NE for 3 August 2022 at p 121, line 13 to p 122, line 14.

Issue 4: Whether this Court should frame altered charges against the Appellants

108 Having found that the Rioting Charge against the Appellants could not stand in view of the lack of evidence of a common object among them to cause hurt to the Victims, the next issue which I had to consider was whether this Court should frame altered charges against the Appellants based on the facts proven in the court below.

Section 390(4) of the CPC allowed this Court to frame an altered charge

109 Section 390(4) of the CPC states that:

> **Decision on appeal**
>
> …
>
> (4) Despite any provision in this Code or any written law to the contrary, when hearing an appeal against an order of acquittal or conviction or any other order, *the appellate court may frame an altered charge (whether or not it attracts a higher punishment)* if satisfied that, based on the records before the court, there is sufficient evidence to constitute a case which the accused has to answer.
>
> [emphasis added]

110 However, in *Imran bin Mohd Arip v Public Prosecutor and another appeal* [2021] SGCA 91 (at [30]), the Court of Appeal stated that the power provided by s 390(4) of the CPC must be exercised sparingly:

> … The exercise of such a power [under s 390(4) of the CPC] must be exercised sparingly, subject to careful observance of the *safeguards against prejudice to the defence*, which must be rigorously observed. The court must be satisfied that the *proceedings below would have taken the same course*, and the *evidence led would have been the same had the amended charge been presented at the trial.* The primary consideration is that the amendment will not cause any injustice, or *affect the presentation of the evidence*, in particular, *the accused's defence*: *Public Prosecutor v Koon Seng Construction Pte Ltd* [1996] 1 SLR(R) 112 at [21]; *Sim Wen Yi Ernest v Public*

> *Prosecutor* [2016] 5 SLR 207 at [12]; and *GDC v Public Prosecutor* [2020] 5 SLR 1130 ("*GDC*") at [29].
>
> [emphasis in original]

111 Given the above, the two key questions I considered in deciding whether to frame an altered charge against each Appellant were as follows:

(a) whether there was sufficient evidence based on the records to constitute a case which the Appellants had to answer; and

(b) whether the framing of an altered charge against each Appellant would be prejudicial to them.

112 Therefore, I invited the parties to submit on whether it was appropriate to frame altered charges against the Appellants based on the two questions above.

It was appropriate to frame two altered charges against Michael

113 I first considered whether it was appropriate to frame altered charges against Michael. Both counsel for Michael and the Prosecution took the position that there was sufficient evidence based on the records to constitute a case against Michael in relation to the incident at Lot 42 where he had kicked Daniel twice,[133] and the incident near Lot 55 where George had been assaulted.[134] I agreed with this position. Based on the findings of fact by the DJ, it was clear that Michael had kicked Daniel twice at Lot 42 with the intention to cause

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133 Written Submissions of the Prosecution on altered charges dated 22 November 2023 ("Prosecution's 22 November Submissions") at paras 8 to 9; Written Submissions of Michael and Lye Choon on altered charges dated 22 November 2023 ("Michael and Lye Choon's 22 November Submissions") at para 1.

134 Prosecution's 22 November Submissions at paras 10 to 11; Michael and Lye Choon's 22 November Submissions at para 1.

hurt.[135] Later, Michael was involved in the incident near Lot 55 when he assaulted George together with Lye Choon, Meng Chong and Wan Seng with the intention to cause hurt.[136]

114 In relation to the incident at Lot 42, the Prosecution and counsel for Michael agreed that no prejudice would be caused to Michael if a charge under s 323 of the Penal Code was framed against Michael. I agreed with this position, since a charge under s 323 of the Penal Code was simply a less serious version of the original Rioting Charge.[137] More significantly, the Prosecution's case against Michael on the altered charge would have been the same in relation to the incident at Lot 42, apart from the excision of the legal element of a common object.[138] Therefore, I exercised my power under s 390(4) of the CPC to frame the following charge against Michael in relation to the incident at Lot 42:

> You, **MICHAEL MARCUS LIEW**,
>
> are charged that you, on 1 May 2017, at or around 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, did cause hurt to K Amuthan Daniel, *to wit*, by kicking him two times in the lower abdominal, intending to cause him hurt, and thereby causing him pain in the lower abdominal, and you have committed an offence punishable under section 323 of the Penal Code (Cap 224, 2008 Rev Ed).

115 In relation to the incident near Lot 55, the Prosecution and counsel for Michael agreed that no prejudice would be caused to Michael if a charge under s 323 read with s 34 of the Penal Code was framed against Michael. However, counsel for Michael submitted that it would be prejudicial if the altered charge made reference to Wan Seng's use of the baton in the incident near Lot 55. This

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135 ROP at p 871: The DJ's GD at [35].

136 ROP at p 871: The DJ's GD at [35].

137 Prosecution's 22 November Submissions at paras 19 to 20.

138 Prosecution's 22 November Submissions at para 22.

was because the other participants in the incident near Lot 55 had not been examined in the court below on whether they had been aware of Wan Seng's baton or if they had shared a common intention for Wan Seng to use the baton during the incident.[139] The Prosecution recognised that there was no evidence that the other participants in the incident near Lot 55 had shared Wan Seng's intention to use the baton, and proposed that no reference be made to Wan Seng's involvement in the altered charge under s 323 read with s 34 of the Penal Code framed against Michael, Lye Choon and Meng Chong.[140] Rather, the Prosecution suggested that a separate charge under s 324 of the Penal Code could be framed against Wan Seng for his use of the baton.[141] I agreed that there was no evidence pointing to any common intention among Michael, Lye Choon and Meng Chong for Wan Seng to use the baton. In the absence of such evidence, an altered charge under s 323 read with s 34 of the Penal Code which addressed only the conduct of Michael, Lye Choon and Meng Chong was appropriate. Therefore, I exercised my power under s 390(4) of the CPC to frame the following charge against Michael in relation to the incident near Lot 55:

> You, **MICHAEL MARCUS LIEW**,
>
> are charged that you, on 1 May 2017, at or around 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, together with Cheo Lye Choon and Tok Meng Chong, and in pursuance of the common intention of you three, did cause hurt to G K Karunan George, *to wit*, by punching his face and back, intending to cause him hurt, and thereby causing him pain on the left side of his head and tenderness on his left posterior lower ribs, and you have committed an offence punishable under section 323 read with section 34 of the Penal Code (Cap 224, 2008 Rev Ed).

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139 Michael and Lye Choon's 22 November Submissions at para 2.

140 Prosecution's 22 November Submissions at para 12.

141 Prosecution's 22 November Submissions at para 12.

It was appropriate to frame one altered charge against Lye Choon

116 I next considered whether it was appropriate to frame an altered charge against Lye Choon. The Prosecution and counsel for Lye Choon agreed that there was sufficient evidence based on the records to constitute a case against Lye Choon in relation to the incident near Lot 55 where George had been assaulted.[142] I agreed with this position as the record clearly showed that Lye Choon had been involved in the incident near Lot 55 when he had assaulted George together with Michael, Meng Chong and Wan Seng with the intention to cause hurt.[143]

117 In line with what I have set out at [115] above in relation to the altered charge against Michael for the incident near Lot 55, I similarly found that an altered charge under s 323 read with s 34 of the Penal Code which encompassed the conduct of only Lye Choon, Michael and Meng Chong was appropriate. Therefore, I exercised my power under s 390(4) of the CPC to frame the following charge against Lye Choon in relation to the incident near Lot 55:

> You, **CHEO LYE CHOON**,
>
> are charged that you, on 1 May 2017, at or around 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, together with Michael Marcus Liew and Tok Meng Chong, and in pursuance of the common intention of you three, did cause hurt to G K Karunan George, *to wit*, by punching his face and back, intending to cause him hurt, and thereby causing him pain on the left side of his head and tenderness on his left posterior lower ribs, and you have committed an offence punishable under section 323 read with section 34 of the Penal Code (Cap 224, 2008 Rev Ed).

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142 Prosecution's 22 November Submissions at paras 10 to 11; Michael and Lye Choon's 22 November Submissions at para 1.

143 ROP at p 876: The DJ's GD at [51].

It was appropriate to frame one altered charge against Meng Chong

118 I next considered whether it was appropriate to frame an altered charge against Meng Chong. The Prosecution and counsel for Meng Chong agreed that there was sufficient evidence based on the records to constitute a case against Meng Chong in relation to the incident near Lot 55 where George had been assaulted.[144] I agreed with this position as the record clearly showed that Meng Chong was involved in the incident near Lot 55 when he had assaulted George together with Michael, Lye Choon and Wan Seng with the intention to cause hurt.[145]

119 In line with what I have set out at [115] above in relation to the altered charge against Michael for the incident near Lot 55, I similarly found that an altered charge under s 323 read with s 34 of the Penal Code which encompassed the conduct of only Meng Chong, Michael and Lye Choon was appropriate. Therefore, I exercised my power under s 390(4) of the CPC to frame the following charge against Meng Chong in relation to the incident near Lot 55:

> You, **TOK MENG CHONG**,
>
> are charged that you, on 1 May 2017, at or around 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, together with Michael Marcus Liew and Cheo Lye Choon, and in pursuance of the common intention of you three, did cause hurt to G K Karunan George, *to wit*, by punching his face and back, intending to cause him hurt, and thereby causing him pain on the left side of his head and tenderness on his left posterior lower ribs, and you have committed an offence punishable under section 323 read with section 34 of the Penal Code (Cap 224, 2008 Rev Ed).

144 Prosecution's 22 November Submissions at paras 10 to 11; Written Submissions of Meng Chong on altered charges dated 22 November 2023 at paras 7 and 9.

145 ROP at p 877: The DJ's GD at [55] to [56].

It was appropriate to frame one altered charge against Wan Seng

120 I next considered whether it was appropriate to frame an altered charge against Wan Seng. Counsel for Wan Seng accepted that there was sufficient evidence based on the records to constitute a case against Wan Seng in relation to his use of the baton to hit George's back near Lot 55.[146] This was similarly the Prosecution's position.[147] I agreed with this position. Based on the findings of fact made by the DJ, it was clear that Wan Seng had used the baton to assault George with the intention to cause hurt.

121 Where the Prosecution and counsel for Wan Seng differed, however, was on the appropriate altered charge to be framed against Wan Seng. The Prosecution submitted that an altered charge of voluntarily causing hurt using a dangerous weapon under s 324 of the Penal Code ought to be framed against Wan Seng for his use of the baton.[148] However, counsel for Wan Seng submitted that the appropriate altered charge was one under s 323 of the Penal Code, as prejudice would be caused to Wan Seng if a charge under s 324 of the Penal Code was framed against him.[149]

122 Ultimately, I found that the appropriate altered charge to be framed against Wan Seng was a charge under s 323 of the Penal Code. However, notwithstanding that this was the outcome sought by Wan Seng, the reasons for my decision differed from the reasons provided by Wan Seng's counsel. I set

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146 Written Submissions of Wan Seng on altered charges dated 22 November 2023 ("Wan Seng's 22 November Submissions") at paras 6, 10 and 12.

147 Prosecution's 22 November Submissions at para 13.

148 Prosecution's 22 November Submissions at paras 12 to 13.

149 Wan Seng's 22 November Submissions at paras 7 to 13.

out counsel's arguments on prejudice as well as my reasons for framing a charge under s 323 of the Penal Code below:

(a) Counsel for Wan Seng first pointed to the fact that Wan Seng had already pleaded guilty to the Offensive Weapon Charge, which was inextricably linked to Wan Seng's use of the baton to hit George's back. Further, the evidence showed that Wan Seng's use of the baton to hit George's back had occurred soon after the Offensive Weapon Charge. Therefore, it was submitted that framing an altered charge under s 324 of the Penal Code against Wan Seng would have been prejudicial, since the use of the baton would have already been a key element of the charge under s 324 of the Penal Code and there would have been "double-counting" of the same fact.[150] I disagreed with this argument. In my view, it was clear that, when Wan Seng had used the baton in a public place to hit George's back, two distinct offences had been committed – an offence of being armed with the baton, and an offence of using the baton to cause hurt to George. Under s 22(1)(*a*) of the MOA, an offence was committed simply when an offender (in the present case, Wan Seng) was armed with any dangerous or offensive instrument without lawful authority or a lawful purpose. Therefore, the Offensive Weapon Charge only captured one of the two distinct offences which had been committed by Wan Seng, *ie*, his possession of the baton. On its own, the Offensive Weapon Charge did not address the further offence committed by Wan Seng when he used the baton to hit George's back. There would have not been any "double-counting" if a charge under s 324 of the Penal Code were preferred. Further, if there was a concern at all that Wan Seng was being punished twice for the same set of facts

150 Wan Seng's 22 November Submissions at para 12(a) to 12(b).

of being armed with a baton which he had then used to hit George's back, this would have been a concern to be addressed at the sentencing stage.

(b) Counsel also argued that there would have been prejudice caused to Wan Seng because of the stage of proceedings at which the charge under s 324 of the Penal Code had been preferred. According to Wan Seng's counsel, had a charge under s 324 of the Penal Code and the Offensive Weapon Charge been preferred against Wan Seng at the outset, Wan Seng would have had the opportunity to explore various legal options. These could have included arriving at a plea bargain with the Prosecution to either have the charge under s 324 of the Penal Code reduced to s 323 of the Penal Code on condition of a guilty plea, or to have the Offensive Weapon Charge taken into consideration for the purposes of sentencing if he pleaded guilty to the charge under s 324 of the Penal Code. Those options were no longer available to Wan Seng.[151] In my view, however, prejudice would not have been caused to Wan Seng simply because various options relating to plea bargaining were no longer available to him. As was made clear by Menon CJ in *GDC v Public Prosecutor* [2020] 5 SLR 1130 (at [29]), the key question was whether the proceedings below would have taken the same course and the evidence led would have been the same had the altered charge been presented at the trial. In this regard, it was important to remember that Wan Seng's defence in the court below had been a bare denial. Even at the appeal stage, Wan Seng maintained that he had not used the baton to hit George, and had also not kicked or punched George.[152] Therefore,

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151 Wan Seng's 22 November Submissions at para 12(c).

152 Wan Seng's 21 June Submissions at paras 68, 76 and 80.

Wan Seng's argument that he could have considered engaging in plea bargaining could not be squared with the reality that his defence, from his first statement recorded on 1 May 2017 until the appeal, was that he had not hit anyone. I therefore disagreed with counsel's arguments relating to prejudice.

(c) In my view, however, there was a different reason why it was inappropriate to frame an altered charge under s 324 of the Penal Code against Wan Seng. For a charge to be made out under s 324 of the Penal Code, there must have been a finding of fact that the baton used by Wan Seng *was an instrument which, when used as a weapon of offence, was likely to cause death*. In *Ng Hoe Leong v Public Prosecutor* [1998] 1 SLR(R) 337, Yong Pung How CJ (as he then was) suggested that this was a question of fact for the court to decide (at [26]). Based on the records of the present case, there was no such finding of fact that, or indeed consideration at all as to whether, the baton, when used as a weapon of offence, was one which was likely to cause death. Further, the Offensive Weapon Charge under the MOA to which Wan Seng pleaded guilty only required that the baton be an offensive instrument. In the absence of a finding of fact that the baton was likely to cause death when used as a weapon of offence, I found it inappropriate to frame an altered charge under s 324 of the Penal Code.

123 Therefore, I exercised power under s 390(4) of the CPC to frame the following charge against Wan Seng in relation to his use of the baton to hit George near Lot 55:

> You, **NG WAN SENG**,
>
> are charged that you, on 1 May 2017, at or around 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, did cause hurt to G

> K Karunan George, *to wit*, by using a 60 cm black baton to hit his back, intending to cause him hurt, and thereby causing him tenderness on his left posterior lower ribs, and you have committed an offence punishable under section 323 of the Penal Code (Cap 224, 2008 Rev Ed).

It was appropriate to frame two altered charges against Regina

124 I next considered whether it was appropriate to frame altered charges against Regina.

(1) Assault on Maureen near Lot 57 and Lot 58

125 In relation to the assault on Maureen near Lot 57 and Lot 58, the Prosecution and counsel for Regina were broadly in agreement that there was sufficient evidence based on the records to constitute a case against Regina.[153] Both also agreed that no prejudice would be caused to Regina if an altered charge under s 323 of the Penal Code were framed against her in relation to her assault on Maureen.[154] I agreed with this position. Based on the findings of fact made by the DJ, it was clear that Regina had assaulted Maureen near Lot 57 and Lot 58 with the intention to cause hurt.[155]

126 However, counsel for Regina submitted that the altered charged ought to state only that Regina slapped Maureen, as there was insufficient evidence to conclude if Regina had pulled Maureen's hair or hit her head.[156] I disagreed with this submission. Based on the evidence of Maureen, whom the DJ found to be

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153 Prosecution's 22 November Submissions at paras 15 to 16; Written Submissions of Regina on altered charges dated 22 November 2023 ("Regina's 22 November Submissions") at para 13.

154 Prosecution's 22 November Submissions at para 15; Regina's 22 November Submissions at para 51.

155 ROP at pp 870 to 871: The DJ's GD at [33].

156 Regina's 22 November Submissions at paras 21 to 44.

credible, Regina had pulled Maureen's hair which had caused Maureen to fall to the ground, and then hit Maureen and kicked her head.[157] As the Prosecution observed, this was also corroborated by Daniel and Sreelatha.[158] Therefore, there was sufficient evidence to conclude that Regina had pulled Maureen's hair and then kicked her head while she was on the ground. Accordingly, I exercised my power under s 390(4) of the CPC to frame the following charge against Regina:

> You, **CHAN HUI YI REGINA**,
>
> are charged that you, on 1 May 2017, at or about 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, did cause hurt to Maureen Baricautro Mamucod, *to wit*, by pulling her hair, and hitting and kicking her head while she was on the ground, intending to cause her hurt, and thereby causing her hematoma over her left temporal occipital, and a superficial bruise over her right hand, and you have committed an offence punishable under section 323 of the Penal Code (Cap 224, 2008 Rev Ed).

(2) Assault on Sreelatha near Lot 57 and Lot 58

127 In relation to the assault on Sreelatha near Lot 57 and Lot 58, counsel for Regina submitted that there was insufficient evidence to conclude that Regina had assaulted Sreelatha. This was because, while the DJ found that Sreelatha had been assaulted by Regina, there was no finding made on the specific manner in which Regina assaulted Sreelatha.[159] I disagreed with this submission. Based on the evidence of Sreelatha, whom the DJ found to be credible, Regina had hit Sreelatha's right eye and lip.[160] As the Prosecution

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157 ROP at pp 65, 68, 69 and 71: NE for 3 January 2019 at pp 12 (lines 16 to 19), 15 (line 8), 16 (line 27) and 18 (lines 12 to 15).

158 Prosecution's 22 November Submissions at para 15.

159 Regina's 22 November Submissions at paras 45 to 48.

160 ROP at pp 215 to 216: NE for 4 January 2019 at p 54, lines 1 to 2, and p 54, line 20 to p 55, line 5.

observed, this was also corroborated by Maureen.[161] In my view, therefore, there was sufficient evidence to constitute a case against Regina in relation to her assault on Sreelatha near Lot 57 and Lot 58. Further, no prejudice would have been caused to Regina if an altered charge was framed against her given that this was precisely the Prosecution's case in the court below against Regina. Accordingly, I exercised my power under s 390(4) of the CPC to frame the following charge against Regina:

> You, **CHAN HUI YI REGINA**,
>
> are charged that you, on 1 May 2017, at or about 2.16 am, in the vicinity of 10 Tebing Lane, Singapore, did cause hurt to Sreelatha Thankamaniamma, *to wit*, by hitting her right eye and lip, intending to cause her hurt, and thereby causing her an injury to her eye, and a cut on her lip, and you have committed an offence punishable under section 323 of the Penal Code (Cap 224, 2008 Rev Ed).

The Appellants declined to offer defences to the altered charges and were, therefore, convicted of the altered charges

128 Following my decision to frame altered charges against the Appellants, I invited the Appellants to state whether they intended to offer defences to the altered charges framed against each of them as required under s 390(6) of the CPC. The Appellants indicated that they did not intend to offer defences to the altered charges framed against each of them.

129 I was satisfied that there was sufficient evidence based on the records before this Court to convict the Appellants of the altered charges, and I exercised my power under s 390(8)(*a*) of the CPC to the convict the Appellants of the altered charges.

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161 Prosecution's 22 November Submissions at para 17.

Sentences which were imposed in relation to the altered charges framed against the Appellants

130 The parties were then invited to submit on the appropriate sentences for the altered charges which the Appellants were convicted of. The Appellants relied on the sentencing framework in *Low Song Chye v Public Prosecutor and another appeal* [2019] 5 SLR 526 ("*Low Song Chye*") for offences under s 323 of the Penal Code. The Appellants submitted that their offences as encapsulated in the altered charges fell within Band 1 of the *Low Song Chye* sentencing framework. Given the minor nature of the injuries caused to the Victims, the Appellants submitted that fines were appropriate.

131 In contrast, the Prosecution submitted that short custodial sentences ought to be imposed for each of the altered charges which the Appellants were convicted of.

132 In arriving at the appropriate sentences for the altered charges which the Appellants were convicted of, I considered the following:

> (a) First, I considered that the injuries sustained by the Victims were minor in nature: (i) Daniel had suffered pain in his lower abdominal; (ii) George had suffered pain on the left side of his head and tenderness on his left posterior lower ribs; (iii) Maureen had suffered a hematoma over her left temporal occipital and a superficial bruise over her right hand; and (iv) Sreelatha had suffered a minor injury to her eye and a cut on her lip. None of these injuries were significant. Based on the Victims' injuries alone, the Appellants' offences under s 323 of the Penal Code fell within the lower end of Band 1 of the *Low Song Chye* sentencing framework which covered minor injuries (*Low Song Chye* at [80]).

(b) Second, there were several factors which enhanced the culpability of the Appellants:

(i) The Appellants' voluntary intoxication was undeniably an aggravating factor: see *Public Prosecutor v Satesh s/o Navarlan* [2019] SGHC 119 at [23]; *Chung Wan v Public Prosecutor* [2019] 5 SLR 858 at [57]; *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 at [44] and [49]; *Public Prosecutor v Lim Chee Yin Jordon* [2018] 4 SLR 1294 at [56].

(ii) The incident involving the assault on George by Michael, Lye Choon and Meng Chong near Lot 55 was a group attack. Aedit Abdullah J stated in *Arumugam Selvaraj v Public Prosecutor* [2019] 5 SLR 881 (at [14]) that an assault by a group as against that by an individual generally entails a greater degree of culpability as "the victim is outnumbered, and generally overwhelmed". In my view, however, this had to be balanced against the fact that the injuries actually sustained by George were minor despite the group attack.

(iii) Further, Wan Seng's use of the baton to assault George was undeniably an aggravating factor.

(iv) Finally, Michael and Regina each assaulted *two* of the Victims.

133 Having considered the aggravating factors alongside the minor nature of the injuries sustained by the Victims, I was of the view that the appropriate sentence for each of the altered charges which the Appellants were convicted of was a high fine. Accordingly, I imposed the following sentences as set out in the table below:

Appellant	Charge	Sentence imposed
Michael	Charge under s 323 of the Penal Code in relation to the assault on Daniel at Lot 42	Fine of $3,000 (with a default sentence of two weeks' imprisonment)
	Charge under s 323 read with s 34 of the Penal Code in relation to the assault on George by Michael, Lye Choon and Meng Chong near Lot 55	Fine of $4,000 (with a default sentence of three weeks' imprisonment)
Lye Choon	Charge under s 323 read with s 34 of the Penal Code in relation to the assault on George by Michael, Lye Choon and Meng Chong near Lot 55	Fine of $4,000 (with a default sentence of three weeks' imprisonment)
Meng Chong	Charge under s 323 read with s 34 of the Penal Code in relation to the assault on George by Michael, Lye Choon and Meng Chong near Lot 55	Fine of $4,000 (with a default sentence of three weeks' imprisonment)
Wan Seng	Charge under s 323 of the Penal Code in relation to the assault on George using the baton near Lot 55	Fine of $5,000 (with a default sentence of four weeks' imprisonment)
Regina	Charge under s 323 of the Penal Code in relation to the assault on Maureen near Lot 57 and Lot 58	Fine of $3,000 (with a default sentence of two weeks' imprisonment)

	Charge under s 323 of the Penal Code in relation to the assault on Sreelatha near Lot 57 and Lot 58	Fine of $3,000 (with a default sentence of two weeks' imprisonment)

Issue 5: Whether the sentences imposed for the Disorderly Behaviour Charge and the Offensive Weapon Charge were manifestly excessive

134 Finally, I considered the remaining issue of whether the sentences imposed by the DJ for the Disorderly Behaviour Charge (which Michael pleaded guilty to) and the Offensive Weapon Charge (which Wan Seng pleaded guilty to) were manifestly excessive.

The sentence imposed for the Disorderly Behaviour Charge was not manifestly excessive

135 Having considered the submissions by the Prosecution and counsel for Michael, I found that the sentence of two weeks' imprisonment imposed for the Disorderly Behaviour Charge was not, in any way, manifestly excessive. I explain below:

(a) First, as counsel for Michael recognised at the appeal,[162] the principle of deterrence was clearly engaged given that the Disorderly Behaviour Charge involved Michael challenging the authority of a police officer and refusing to step back despite being asked to. More significantly, the facts showed that Michael had not just challenged the authority of the police officers but had acted in *gross defiance* of the directions of the police officers. Michael walked towards the Victims and shouted vulgarities at them despite being told to stay with the rest

162 Submissions of Michael and Lye Choon on appeal against sentence at para 19.

of the Appellants at one side of the Carpark.[163] In my view, there was a clear need to deter such conduct. I, therefore, agreed with the DJ that the custodial threshold was crossed.

(b) Second, counsel for Michael raised two reported precedents where fines had been imposed against offenders who had similarly behaved in a disorderly manner when interacting with police officers: *Public Prosecutor v Gao Zhengkun* [2019] SGDC 241 ("*Gao Zhengkun*") and *Public Prosecutor v Loy Xue Song, Jerome* [2020] SGDC 168 ("*Loy Xue Song*").[164] However, I found that the reported precedents were not particularly helpful. This was because the offenders in both cases had faced *multiple* charges for their conduct against the police officers:

(i) In *Gao Zhengkun*, aside from the charge of behaving in a disorderly manner, the offender was also convicted of a charge under s 353 of the Penal Code for using criminal force on a police officer and a charge under s 6(3) of the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) for his use of insulting words against the police officer. In particular, all three charges covered the offender's conduct against a police officer and arose in the course of a single incident. It therefore made sense for the individual sentences for the less serious charges to be calibrated downwards to account for the deterrent sentence of five weeks' imprisonment imposed for the charge under s 353 of the Penal Code.

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163 ROP at pp 10 to 11: Statement of Facts for the Disorderly Behaviour Charge at para 6.

164 Submissions of Michael and Lye Choon on appeal against sentence at paras 20 to 29.

(ii) In *Loy Xue Song*, aside from the charge of behaving in a disorderly manner, the offender faced a second charge of using criminal force against a police officer under s 353 of the Penal Code. Again, both charges covered the offender's conduct against a police officer and arose in the course of a single incident. It therefore made sense for the individual sentence for the less serious charge, *ie*, the charge of behaving in a disorderly manner, to be calibrated downward to account for the deterrent sentence of nine weeks' imprisonment imposed for the charge under s 353 of the Penal Code.

(iii) In contrast, Michael's conduct in the Disorderly Behaviour Charge was completely distinct from his earlier instance of violence towards some of the Victims. The sentence imposed for the Disorderly Behaviour Charge had to adequately reflect the principle of deterrence which was engaged. A custodial sentence of two weeks' imprisonment could not, therefore, be said to be manifestly excessive.

136 I also considered whether the total sentence imposed on Michael for the Disorderly Behaviour Charge and the two altered charges under s 323 of the Penal Code and s 323 read with s 34 of the Penal Code accorded with the totality principle. In my view, the total sentence of two weeks' imprisonment and a fine totalling $7,000 (with a default sentence of five weeks' imprisonment) could not be said to be crushing or not in keeping with Michael's past record and future prospects.

The sentence imposed for the Offensive Weapon Charge was not manifestly excessive

137 In relation to the Offensive Weapon Charge, having considered the submissions by the Prosecution and counsel for Wan Seng, I did not find that the sentence of three months' imprisonment was manifestly excessive. I explain below:

(a) Counsel for Wan Seng argued that the DJ had erred in considering the unreported precedents cited by the Prosecution in the court below in arriving at the sentence for the Offensive Weapon Charge.[165] It is trite that unreported decisions lack sufficient particulars to paint the entire factual landscape required to appreciate the reasons for the sentences imposed: *Abdul Aziz bin Mohamed Hanib v Public Prosecutor and other appeals* [2022] SGHC 101 at [173]. The reason for placing little, if any, weight on an unreported precedent is that it is unreasoned, and it is therefore not possible to discern what weighed on the mind of the sentencing judge: *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 at [13(b)].

(b) However, what was crucial was that neither the Prosecution nor counsel who represented Wan Seng in the court below had cited *any* reported precedents. This much was clear from the record. All that was placed before the DJ for consideration were the unreported precedents cited by the Prosecution. In the circumstances, the DJ considered that sentences in the range of three to six months' imprisonment were *typically* imposed for offences under s 22(1)(*a*) of the MOA. The DJ then agreed with the Prosecution's submission that a sentence of three

165 Wan Seng's 21 June Submissions at para 107.

months' imprisonment was appropriate on account of the following factors: (i) the length of the baton used by Wan Seng was about 60cm, which was rather long; (ii) Wan Seng had carried the baton around in his van, as opposed to an offender who spontaneously picked up a weapon which he innocuously came across; and (iii) the baton had been used to cause hurt to George. I failed to see how the DJ could be faulted in his approach given the parties' submissions in the court below on the Offensive Weapon Charge.

(c) Even at the appeal, counsel for Wan Seng did not cite any reported precedents to show that the appropriate sentence was an imprisonment term not exceeding one month. In contrast, the Prosecution pointed to several reported precedents which showed that sentences in the range of three to six months' imprisonment had previously been imposed for offences under s 22(1)(*a*) of the MOA.[166]

(d) While I noted that the offensive weapon in question was a baton as opposed to a more dangerous weapon, such as a knife, I did not find that the sentence of three months' imprisonment imposed by the DJ was manifestly excessive in view of the aggravating factors highlighted above. While I allowed Wan Seng's appeal against conviction in relation to the Rioting Charge, that was on the basis that there was no evidence of a *common object* among the Appellants. However, I did not disturb the findings of fact made by the DJ on the events which had unfolded at the Carpark. Therefore, the fact remained that Wan Seng had *used* the baton to cause hurt to George which formed an altered charge which he

166 Prosecution's 21 June Submissions at para 91. In particular, see footnote 211 of the Prosecution's 21 June Submissions at para 91, where the Prosecution cited several reported precedents which showed that sentences in the range of three to six months' imprisonment had previously been imposed for offences under s 22(1)(*a*) of the MOA.

was convicted of. In the circumstances, a sentence of three months' imprisonment was wholly justified and was not manifestly excessive.

138 I also considered whether the total sentence imposed on Wan Seng for the Offensive Weapon Charge and the altered charge under s 323 of the Penal Code accorded with the totality principle. In my view, the total sentence of three months' imprisonment and a fine of $5,000 (with a default sentence of four weeks' imprisonment) could not be said to be crushing or not in keeping with Wan Seng's past record and future prospects.

139 Given the above, I dismissed Michael's appeal against his sentence for the Disorderly Behaviour Charge as well as Wan Seng's appeal against his sentence for the Offensive Weapon Charge.

Conclusion

140 In summary, these were my findings on the five issues outlined at [78] above:

(a) First, I found that the DJ had made no error in preferring the Victims' evidence over the Appellants' evidence. The DJ had carefully analysed the evidence and the testimonies of the witnesses. It was clear that the DJ's findings on the events at the Carpark and how the Appellants were each involved were not plainly wrong or against the weight of the evidence. Appellate intervention was not warranted.

(b) Second, I found that the DJ had erred in finding that the Appellants had been members of an unlawful assembly who had a common object to voluntarily cause hurt to the Victims. Given the lack of evidence which supported that there had been a common object among the Appellants to cause hurt to the Victims, the DJ ought not to have convicted each Appellant of the Rioting Charge. In the circumstances, I allowed the Appellants' appeals against conviction in relation to their respective Rioting Charge.

(c) Third, given my finding above, it was not strictly necessary to determine whether the DJ had erred in his treatment of the expert evidence at the remittal hearing. However, having reviewed the parties' submissions and the DJ's grounds of decision following the remittal hearing, I disagreed with the submissions by Michael and Lye Choon. The DJ made no error in finding that the Dr Tan's evidence was not cogent. The DJ correctly found that the evidence of Dr Mak and Dr Guo were cogent and based on objective evidence apart from the self-reported accounts of Michael and Lye Choon. Given this, the DJ rightly

found that Michael and Lye Choon had not been so intoxicated that they could not form the necessary criminal intent.

(d) Fourth, I found that there was sufficient evidence based on the records to constitute a case against each Appellant for their respective involvement in assaulting the Victims. There was also no prejudice caused to the Appellants if altered charges were framed against them. Accordingly, I framed altered charges against the Appellants. The Appellants did not offer defences to the altered charges and were, therefore, convicted of the charges. I set out below a summary of the altered charges which they were convicted of and the sentences which were imposed on each of them:

(i) In the case of Michael, he was convicted of an altered charge under s 323 of the Penal Code for his assault on Daniel at Lot 42, and a charge under s 323 read with s 34 of the Penal Code for his involvement in the assault on George near Lot 55 together with Lye Choon and Meng Chong. A fine of $3,000 (with a default sentence of two weeks' imprisonment) was imposed on Michael for the charge relating to his assault on Daniel at Lot 42. A fine of $4,000 (with a default sentence of three weeks' imprisonment) was imposed on Michael for the charge relating to the assault on George near Lot 55 by Michael, Lye Choon and Meng Chong.

(ii) In the case of Lye Choon, he was convicted of an altered charge under s 323 read with s 34 of the Penal Code for his involvement in the assault on George near Lot 55 together with Michael and Meng Chong. A fine of $4,000 (with a default

sentence of three weeks' imprisonment) was imposed on Lye Choon.

(iii) In the case of Meng Chong, he was convicted of an altered charge under s 323 read with s 34 of the Penal Code for his involvement in the assault on George near Lot 55 together with Michael and Lye Choon. A fine of $4,000 (with a default sentence of three weeks' imprisonment) was imposed on Meng Chong.

(iv) In the case of Wan Seng, he was convicted of an altered charge under s 323 of the Penal Code for his use of the baton to assault George near Lot 55. A fine of $5,000 (with a default sentence of four weeks' imprisonment) was imposed on Wan Seng.

(v) In the case of Regina, she was convicted of two altered charges under s 323 of the Penal Code for her assault on Maureen and Sreelatha near Lot 57 and Lot 58. A fine of $3,000 (with a default sentence of two weeks' imprisonment) was imposed for each of the two altered charges which Regina was convicted of.

(e) Fifth, I found that the sentences imposed for the Disorderly Behaviour Charge and the Offensive Weapon Charge were not manifestly excessive.

141 In view of the above, I allowed the Appellants' appeals against conviction in relation to their respective Rioting Charges. The Appellants were therefore acquitted of their respective Rioting Charges, with each of their convictions and sentences for the charge set aside and altered charges framed

against each of them. They were convicted of the altered charges, and fines were imposed for each of the altered charges.

142 With respect to the Michael's Disorderly Behaviour Charge, I dismissed his appeal against the sentence of two weeks' imprisonment as the sentence was not manifestly excessive. With respect to Wan Seng's Offensive Weapon Charge, I dismissed his appeal against the sentence of three months' imprisonment as the sentence was not manifestly excessive.

Vincent Hoong
Judge of the High Court

Tan Joon Liang Josephus and Cory Wong Guo Yean (Invictus Law Corporation) for the appellants in Magistrate's Appeals Nos 9024 and 9025 of 2020;
Wee Heng Yi Adrian and Lynette Chang Huay Qin (Lighthouse Law LLC) for the appellant in Magistrate's Appeal No 9026 of 2020;
Sunil Sudheesan, Ngiam Hian Theng Diana (Yan Xianting) and Khoo Hui-Hui Joyce (Quahe Woo & Palmer LLC) for the appellant in Magistrate's Appeal No 9027 of 2020;
Tanaya Shekhar Kinjavdekar (Trident Law Corporation) for the appellant in Magistrate's Appeal No 9028 of 2020;
Yang Ziliang and Zhou Yang (Attorney-General's Chambers) for the respondent in Magistrate's Appeals Nos 9024, 9025, 9026, 9027 and 9028 of 2020.