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

[2023] SGHC 14

Suit No 256 of 2020

Between

Mah Kiat Seng

… *Plaintiff*

And

(1) Attorney-General
(2) Mohamed Rosli bin Mohamed
(3) Tan Thiam Chin Lawrence

… *Defendants*

JUDGMENT

[Statutory Interpretation — Construction of statute]
[Tort — Assault and battery]
[Tort — Breach of statutory duty — Duties imposed by statute]
[Tort — False imprisonment]

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Mah Kiat Seng
v
Attorney-General and others

[2023] SGHC 14

General Division of the High Court — Suit No 256 of 2020
Philip Jeyaretnam J
2, 3, 5, 10–12 August 2022, 21 October 2022

19 January 2023 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 Individual police officers are entrusted by law with the duty to apprehend persons believed to be dangerous to themselves or others by reason of mental disorder. The relevant provision is s 7 of the Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed) ("MHCTA"). Upon apprehension, the person must be taken without delay either directly to a designated medical practitioner at a psychiatric institution or first to any medical practitioner who may refer the person onward to a designated medical practitioner at a psychiatric institution.

2 Police officers are not themselves required to have medical or psychiatric training. Thus, their belief that a person has a mental disorder and for that reason is a danger is necessarily a lay one. It relies only on common

understanding, experience as a police officer and any general training received to better equip police officers to make such assessments. It must be an honest belief, held on grounds that are reasonable judged in terms of general lay and not specialised medical understanding.

3 The police officer enforcing this provision is additionally protected from liability to civil or criminal proceedings "unless he has acted in bad faith or without reasonable care": see s 25(1) of the MHCTA. Indeed, before any such proceedings can be brought, leave must be sought from the court, and "leave shall not be granted unless the court is satisfied that there is substantial ground for the contention that the person, against whom it is sought to bring the proceedings, has acted in bad faith or without reasonable care": see s 25(2) of the MHCTA.

4 These proceedings, brought by the plaintiff, Mah Kiat Seng ("Mah"), concern two distinct claims. The first is that he was wrongly apprehended and hence falsely imprisoned as a result of the apprehending officer's lies that Mah had been mumbling or speaking to himself, told the officer he had obsessive-compulsive disorder ("OCD") and spat into a plastic bag. The second is that he suffered injury at the hands of a different officer at the lock up.

5 When leave was sought to bring these proceedings, it was refused at first instance: see *Mah Kiat Seng v Attorney-General and others* [2020] 3 SLR 918 ("*Mah No. 1*"). The learned Judge refused leave in respect of the first claim because there was no basis to suggest that the apprehending officer had lied. On the contrary, it was corroborated by the notes of the medical practitioner at the lock up: *Mah No. 1* at [70]. In respect of the second claim, she refused leave because that officer said he had had no verbal or physical contact with Mah on

the night in question, and this was confirmed by the investigating officer: *Mah No. 1* at [81].

6 Mah appealed, and when the Attorney-General's Chambers upon review of certain video evidence discovered that in relation to the second claim, the officer concerned, contrary to what was represented to the Judge at first instance, had had occasion to escort Mah at the lock up on that night, they consented to the appeal being allowed and leave being granted for these proceedings to be brought, including on the first claim.

7 During the course of these proceedings, I dealt with the video evidence, including whether it was privileged: see *Mah Kiat Seng v Attorney-General and others* [2022] 3 SLR 890 ("*Mah No. 2*")

8 Further viewing of relevant video evidence by the apprehending officer led him to note an error concerning the contents of the affidavit he had affirmed for the purpose of the leave application, namely his assertion that Mah had been "mumbling to himself at times".[1] This assertion was consequently not made in his affidavit of evidence-in-chief in these proceedings.

9 The video and other evidence adduced at trial has led me to conclude that not only did Mah not talk to himself when being interviewed by the apprehending officer, neither did he do so when he was seen by the medical practitioner at the lock up, contrary to the medical report on which the learned Judge relied in refusing leave. Moreover, Mah did not tell the apprehending officer he had OCD, nor did he spit into any plastic bag.

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[1] 1st Affidavit of Mohamed Rosli bin Mohamed dated 13 September 2017 in DC/DC 2430/2017 at para 9(a), AB 302–303.

10 For reasons that I will explain, I am satisfied that the apprehending officer acted in bad faith in apprehending Mah. However, I do not find that Mah's complaints that he was assaulted are made out.

Facts

The parties

11 Mah is a litigant in person. The first defendant is the Attorney-General ("AG") representing the Singapore Police Force ("SPF") sued pursuant to s 19(3) of the Government Proceedings Act (Cap 121, 1985 Rev Ed). The second defendant, Mohamed Rosli bin Mohamed ("Rosli"), is the police officer who took Mah into custody on 7 July 2017 under s 7 of the MHCTA, while the third defendant, Tan Thiam Chin Lawrence ("Tan"), is a police officer who interacted with Mah at the Central Police Division Regional Lock-Up ("RLU").

Procedural history

12 This action was commenced by Mah pursuant to leave granted by the Court of Appeal on 5 March 2020 under s 25 of the MHCTA. As I have already explained at [5] and [6] above, the AG consented to the grant of leave on appeal.

13 As part of the instituted proceedings, Mah was granted access to view various recordings made by body-worn cameras ("BWC") and closed-circuit television cameras ("CCTV"). These recordings respectively depicted Mah's apprehension outside Suntec City and his subsequent detention at the RLU (see *Mah No. 2*).

Undisputed facts

14 On 7 July 2017, the complainant called the Singapore Police Force emergency call line and alleged that a Chinese male had touched her son's head. The second defendant and his partner, Sgt Teo Sean ("Teo"), were dispatched to the incident location, *ie*, Suntec City, where they interviewed the complainant at about 7.59pm.[2]

15 When interviewed, the complainant stated that a man had touched her son's head and looked as though he was going to pull his hair. She added that this man ran away when she shouted at him.[3]

16 At about 8.05pm, Rosli and Teo located Mah near a stone bench outside Suntec City and interviewed him.[4] In the course of doing so, Rosli came to an apparent conclusion that Mah was mentally disordered and posed a danger to himself or other persons by reason of that disorder.[5] Consequently, Rosli proceeded, with the assistance of two more police officers, namely Sgt Syahirah binte Zulkepli ("Syahirah") and Sgt Ong Jin Kai Benny ("Ong"), to apprehend Mah under s 7 of the MHCTA. Mah was handcuffed.[6]

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2 Mohamed Rosli bin Mohamed's Affidavit of Evidence-in-Chief ("AEIC") dated 26 May 2022 ("Rosli's AEIC") at paras 8–11; Teo Sean's AEIC dated 24 May 2022 ("Teo's AEIC") at paras 4–9; Agreed Bundle of Documents dated 26 July 2022 ("AB") at pp 7, 62–92.

3 Rosli's AEIC at para 11; Sean's AEIC at para 9; Syahirah binte Zulkepli's AEIC dated 30 May 2022 ("Syahirah's AEIC") at paras 6–8; Ong Jin Kai Benny's AEIC dated 23 May 2022 ("Ong's AEIC") at paras 11–14; AB at p 64.

4 Rosli's AEIC at para 15; Teo's AEIC at para 11; AB at pp 59, 93–199, 273; 2/8/22 NE 44.

5 Rosli's AEIC at paras 17–22, 27; Teo's AEIC at paras 13–14.

6 Rosli's AEIC at paras 28–29; Teo's AEIC at paras 19–21; Statement of Claim (Amendment No 1) dated 5 August 2020 ("SOC") at paras 10–11.

17 Syahirah and Ong escorted Mah from Suntec City to the RLU in a police car.[7] The party arrived at the RLU at about 9.11pm whereupon Ong conducted a search of Mah's body and belongings.[8] Mah was detained in Cell 4M at about 10.00pm and examined by Dr Lin Hanjie ("Dr Lin") of Healthway Medical Group Pte Ltd in the RLU at about 10.19pm. Dr Lin referred Mah to the Institute of Mental Health ("IMH") for treatment under s 9 of the MHCTA.[9]

18 Mah was subsequently transferred from Cell 4M to a padded cell, Cell 24P.[10] At about 2.15am on 8 July 2017, Tan handcuffed Mah through a slot in the door to Cell 24P and escorted Mah from Cell 24P to Cell 30S for Mah to urinate. Thereafter, Tan escorted Mah back to Cell 24P and removed Mah's handcuffs.[11]

19 Next, at about 3.00am, Sgt Wong Jingying ("Wong"), along with two other police officers, escorted Mah from the RLU to IMH.[12] Dr Tracey Wing Li Mun ("Dr Wing"), who was, at the material time, a Psychiatry Resident at IMH, attended to Mah at about 5.00am. Dr Wing was given a Referral Memorandum written by Investigating Officer, Insp Kenneth Tan ("IO Tan"). This stated, among other things, that Mah was "seen to have pulled the hair of a [four-year]

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7 Syahirah's AEIC at paras 9, 11–13; Ong's AEIC at paras 15–17, 23; SOC at para 13.

8 Ong's AEIC at paras 23–25; SOC at para 15; 5/8/22 NE 85–86.

9 Mohammad Shahril bin Ramli's AEIC dated 30 May 2022 ("Shahril's AEIC") at para 6; Lin Hanjie's AEIC dated 26 May 2022 ("Dr Lin's AEIC") at paras 4, 6–7, LHJ-1, LHJ-3; SOC at para 19; Tan Bing Wen Kenneth's AEIC dated 30 May 2022 ("IO Tan's AEIC") at para 6; AB at p 32.

10 AB at p 57; SOC at para 20.

11 AB at p 57; Shahril's AEIC at para 7; Tan Thiam Chin Lawrence's AEIC dated 24 May 2022 ("Tan's AEIC") at paras 8–16; SOC at paras 28–29.

12 AB at p 48; Wong Jingying's AEIC dated 6 May 2022 ("Wong's AEIC") at paras 4–6; SOC at para 37.

old boy at Suntec City".[13] At about 5.43am, Dr Wing made an order under s 10(1) of the MCHTA that Mah be detained for further observation and assessment; she was concerned that Mah posed a risk of harm to minors and suspected that he suffered from an undiagnosed mental disorder.[14]

20 Mah was discharged from IMH on 8 July 2017 at about 7.00pm.[15]

The parties' cases

Mah's case

21 I set out Mah's claims in more detail at the appropriate juncture. For present purposes, it suffices to note the following. Mah contends that the police officers had no authority to apprehend him under s 7 of the MHCTA[16] and breached their duty under this provision to take him without delay to a medical practitioner.[17] He says he was assaulted while in police custody and suffered physical and mental trauma.[18] He also claims that his personal property, namely his bag and mobile phone, were negligently damaged by the police.[19] Finally, Mah avers that the police officers had control over his detention at IMH and prevented the IMH staff from discharging him.[20]

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13 Tracey Wing Li Mun's AEIC dated 20 May 2022 ("Dr Wing's AEIC") at paras 3–4 and TWLM-1; SOC at para 39.

14 AB at p 289; Dr Wing's AEIC at paras 6–7, TWLM-3; SOC at para 43.

15 SOC at para 44; IO Tan's AEIC at paras 15, 17.

16 SOC at paras 12, 45–46, 58(i), 59.

17 SOC at paras 48–50.

18 SOC at paras 12, 18, 25, 30–33, 38, 51–54, 56.

19 SOC at paras 8, 14, 57–58.

20 SOC at paras 41–44.

22 In court, however, Mah confirmed that he no longer seeks aggravated or punitive damages or wishes to pursue his claim that Ong damaged his mobile phone by throwing it on the floor at the RLU. I therefore say no more about these claims.

The defendants' case

23 In its opening statement, the AG contended that as "police officers are [themselves] not medical professionals, they will simply have to use their best judgment in the circumstances of each case to determine if a person must be arrested under section 7 of the MHCTA and brought to a medical professional".[21] The AG, however, adopted a qualitatively different position in its supplemental opening statement, namely, that a police officer's belief that a person is dangerous to himself or other persons by reason of mental disorder "must be founded on reasonable grounds".[22] The AG also pointed out that, in any event, s 25(1)(*b*) of the MHCTA protects a person from civil or criminal proceedings for his acts done under the MHCTA unless "he has acted in bad faith or without reasonable care".[23]

24 That said, the AG consistently maintained that the second defendant apprehended Mah in good faith.[24] Further, the police officers took Mah to a medical practitioner without delay,[25] did not physically abuse him or damage

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21 Defendant's Opening Statement dated 26 July 2022 ("DOS") at para 3.

22 Defendant's Supplemental Opening Statement dated 10 August 2022 ("DSOS") at para 11.

23 DSOS at para 17.

24 DOS at paras 5, 9, 10(c).

25 DSOS at paras 14–16.

his personal property,[26] and neither had control over his detention at IMH nor prevented IMH staff from discharging him.[27]

Issues to be determined

25 The issues for my determination are as follows:

(a) Whether Mah's apprehension was lawful under s 7 of the MHCTA.

(i) What are the legal requirements of s 7 of the MHCTA?

(ii) Did Rosli honestly and reasonably believe Mah to be "dangerous to himself or other persons by reason of mental disorder"?

(iii) Is Rosli nonetheless entitled to rely on s 25(1) of the MHCTA, *ie*, did Rosli act in bad faith or without reasonable care in apprehending Mah?

(b) Whether s 7 of the MHCTA enjoins the police to take Mah immediately to a medical practitioner and if so, did the police comply with this duty.

(c) Whether Mah suffered personal injury or damage to his property.

(i) Whether Mah was punched in his abdomen when he was apprehended.

(ii) Whether Mah suffered injury to his head, wrists and arms while escorted between cells in the RLU.

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26 DOS at paras 9, 10(a)–10(b), 10(d)–10(i).

27 DOS at para 10(j).

(iii) Whether Mah consented to Teo searching his bag and accessing his mobile phone outside Suntec City.

(iv) Whether Ong searched Mah's bag without lawful justification at the RLU.

(v) Whether Rosli damaged the zipper of Mah's bag.

(d) Whether the police's responsibility for Mah's detention ended upon his transfer to IMH.

(e) What Mah is entitled to as damages in relation to any of his claims that have been made out.

Issue 1: Whether Mah's apprehension was lawful under s 7 of the MHCTA

What are the legal requirements of s 7 of the MHCTA?

The law on statutory interpretation

26 The purposive interpretation of a legislative provision involves three steps (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37]–[53]):

(a) First, the court should ascertain possible interpretations of the provision, having regard to the text of the provision as well as the context of the provision within the written law as a whole. This is done by determining the ordinary meaning of the words and reference may be made to rules and canons of statutory construction.

(b) Second, the court should ascertain the legislative purpose of the statute. Legislative purpose should ordinarily be gleaned from the text

itself. Extraneous material may be considered in the situations set out under s 9A(2) of the Interpretation Act 1965 (2020 Rev Ed) ("IA").

(c) Third, the court should compare the possible interpretations of the text against the purpose of the statute. An interpretation which furthers the purpose of the written text is to be preferred to one which does not.

27 Sections 2 and 7 of the MHCTA respectively provide:

> **Interpretation**
>
> **2.**—(1) In this Act, unless the context otherwise requires —
>
> …
>
> "designated medical practitioner", in relation to any psychiatric institution, means a medical practitioner who is working in the psychiatric institution and who is designated by name or office in writing by the Director or such public officer as he may appoint, for the purposes of this Act;
>
> …
>
> "mental disorder" means any mental illness or any other disorder or disability of the mind and "mentally disordered" shall be construed accordingly;
>
> …
>
> **Apprehension of mentally disordered person**
>
> **7.** It shall be the duty of every police officer to apprehend any person who is reported to be mentally disordered and is believed to be dangerous to himself or other persons by reason of mental disorder and take the person together with a report of the facts of the case without delay to —
>
> (*a*) any medical practitioner for an examination and the medical practitioner may thereafter act in accordance with section 9; or
>
> (*b*) any designated medical practitioner at a psychiatric institution and the designated medical practitioner may thereafter act in accordance with section 10.

The parties' submissions

28 Mah's case is that the police ought to have informed him of the grounds of his arrest as soon as he was apprehended.[28] He also contends that a police officer may only apprehend an individual under s 7 of the MHCTA where the individual causes serious injury to others[29] because of his mental disorder.[30]

29 The AG accepts that an individual apprehended under s 7 of the MHCTA must be informed of the grounds of his apprehension.[31] This is consistent with Art 9(3) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("Constitution"). However, it is only necessary to do so as soon as reasonably practicable, rather than immediately.[32]

30 The AG submits that there is no practical difference between the terms "apprehend" (as deployed in s 7 of the MHCTA) and "arrest" (as utilised in other provisions involving the use of police powers such as s 64 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC")). A person is apprehended under s 7 of the MHCTA when he is compelled to accompany a police officer to be examined by a medical practitioner.[33]

31 The AG further contends that a police officer need not receive a formal report that the person apprehended is suffering from a medical disorder. It is pedantic to consider this as a separate matter when s 7 of the MHCTA requires

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28 Plaintiff's Closing Submissions dated 7 October 2022 ("PCS") at para 74.

29 PCS at paras 46–53.

30 PCS at para 24.

31 1st to 3rd Defendants' Closing Submissions dated 7 October 2022 ("DCS") at paras 104–106.

32 DCS at para 106.

33 DCS at para 54.

a police officer to believe that the person apprehended is "dangerous to himself or other persons by reason of mental disorder".[34] Instead, the court should consider whether the apprehending officer honestly believed the person apprehended is dangerous to himself or other persons by reason of mental disorder and thereafter assess whether the police officer had reasonable grounds for his belief.[35]

32 In this connection, danger ought not to be restricted to acts of violence or imminent threats but encompasses a risk of, or actual harm or threat to the safety or security of any person or his property.[36] Mental disorder should similarly be broadly understood, and an apprehending officer need only apply a layman's understanding of how mental disorders might manifest in a person.[37]

33 In support of its position, the AG submits that the parliamentary intent underlying ss 7, 9 and 10 of the MHCTA is to enable the broad-based identification of persons who may be mentally disordered, before identifying the minority of patients who require institutionalisation through the process of medical assessment.[38] This can be gleaned from the architecture of the MHCTA[39] and the Second Reading of the Mental Health (Care and Treatment) Bill (No 11 of 2008) ("2008 Bill").[40]

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34 DCS at paras 56–57.

35 DCS at paras 58, 70.

36 DCS at para 66.

37 DCS at paras 67–68.

38 DCS at para 65.

39 DCS at paras 63–64.

40 DCS at para 65.

The construction of s 7 of the MHCTA

34 From parties' submissions, there are four aspects of the section that arise for potential decision, namely:

(a) Whether and when the police must inform the person apprehended of the grounds of apprehension.

(b) Whether there must first be a report by someone else to the police officer to the effect that the person is or appears to be mentally disordered.

(c) Whether the belief that a danger is posed must be held on reasonable grounds.

(d) How imminent the believed danger must be.

(1) Grounds of apprehension

35 The AG accepts that the person apprehended must be informed of the grounds of his apprehension but contends that this need only be done as soon as reasonably practicable. The AG further accepts by analogy with the law concerning arrest in relation to criminal offences that if the person is not informed, in substance, of the reason why restraints have been imposed on his freedom, the apprehending officer may be liable for false imprisonment. The AG cites the Privy Council decision in *Christie v Leachinsky* [1947] AC 573.

36 I hold that a police officer who apprehends an individual under s 7 of the MHCTA must inform him of the broad grounds of apprehension but need only do so as soon as reasonably practicable. I add that as part of explaining the purpose of apprehension, the police officer should also explain to him the next

steps, including that the person will be brought for assessment by a medical practitioner. The rationale for this is not merely the practical one that it will calm and reassure the person apprehended to know clearly that he is proceeding to see a doctor and is not under arrest for a criminal offence but also the point of principle that by virtue of Art 9 of the Constitution a person is entitled not to be deprived of his personal liberty save in accordance with law. The individual's right to refuse to submit to such deprivation of liberty changes to a duty to submit upon lawful arrest. The person involved must be told of his arrest and in substance why he is being arrested so that he then understands he must submit to the arrest. Thus, Art 9(3) of the Constitution requires that where a person is arrested, they be informed "as soon as may be" of the grounds of arrest.

37 I do not accept Mah's submission that the grounds of apprehension must be immediately informed to the person apprehended. This would impose a more onerous requirement than that of Art 9(3) of the Constitution. It may simply not be practical to do so immediately. When is as soon as reasonably practicable depends on the circumstances of the case, including the present mental state of the person apprehended.

(2) Prior report

38 The phrase "reported to be mentally disordered" used in s 7 of the MHCTA could in my view bear two interpretations. One is the narrow sense of "reported" where someone would have had to report to the police officer that the person was mentally disordered. The second is the broader sense of "reported" which merely connotes that something appears to be the case but it has not been proven to be so.

39 In my view, the latter, broader meaning furthers the legislative purpose while the former narrower one does not. One purpose of s 7 of the MHCTA is public safety. It serves to protect the public from danger potentially posed by mentally disordered persons. The other purpose is to protect mentally disordered persons themselves through the prompt intervention of a police officer. There is no logic in requiring a police officer to act where a mentally disordered person is about to harm others if he hears a report of this from someone else but not where he merely observes and perceives it himself.

40 Support for not imposing a distinct condition of there being a prior report may be found in how a similar phrase in the UK Lunacy Act 1890 was construed by Devlin LJ (as he then was) in the English Court of Appeal decision in *Buxton v Jayne* [1960] 1 WLR 783. The phrase used there was "alleged to be of unsound mind". The existence of the allegation was, on the face of the section, a requirement additional to the officer's belief that the person was of unsound mind. Devlin LJ suggested that "it would be pedantic to investigate as a distinct matter whether the person was alleged to be in that condition" (at 793).

41 My reading of the section is further supported by its legislative history and by a subsequent amendment to it. In terms of legislative history, prior to 1973, the position was as reflected in the original s 32 of the Mental Disorders and Treatment Act (Cap 162, 1970 Rev Ed) ("MDTA 1970"), *viz*, that police officers had the duty to apprehend two classes of persons: "all persons found wandering at large who are reported to be of unsound mind *and* all persons believed to be dangerous to themselves or other persons by reason of unsoundness of mind" [emphasis added]. As explained by Mr Chua Sian Chin (then Minister for Health and Home Affairs) during the Second Reading of the Mental Disorders and Treatment (Amendment) Bill (No 32 of 1973) ("1973 Bill"), the provisions introduced by the 1973 Bill were intended to "bring the

law up-to-date in regard to the admission and detention … of persons of unsound mind in a mental hospital". Hence, while "the emphasis in 1934 was on the compulsory detention of persons of unsound mind … to prevent such persons from causing harm to the community", "[t]he modern trend is to regard mental illness in much the same light as physical illness and disability" and "towards community care" (see *Singapore Parliamentary Debates, Official Report* (28 August 1973) vol 32 at col 1274).

42 The two categories were folded into one so that only persons posing a danger would be subject to apprehension. The first point is that in the first of the earlier categories of "persons found wandering at large who are reported to be of unsound mind", the word "reported" is quite obviously used in its broader sense. The second point is that folding the two categories into one eliminated any duty on the part of police officers to apprehend mentally disordered persons in the community who posed *no* danger to themselves and others. The purpose of the amendment was not to limit the previous duty of apprehending all mentally disordered persons who did pose such a danger by an additional requirement of some form of prior report to the officer.

43 I note that after the events with which these proceedings are concerned, s 7 of the MHCTA was, from 1 January 2020, amended by s 180 of the Criminal Law Reform Act 2019 (Act 15 of 2019) to state as follows:

> **Apprehension of mentally disordered person**
>
> **7.**—(1) It shall be the duty of every police officer or special police officer to apprehend any person believed to be dangerous to himself or such other persons and such danger is reasonably suspected to be attributable to a mental disorder and take the person together with a report of the facts of the case without delay to —

> (*a*) any medical practitioner for an examination and the medical practitioner may thereafter act in accordance with section 9; or
>
> (*b*) any designated medical practitioner at a psychiatric institution and the designated medical practitioner may thereafter act in accordance with section 10.
>
> (2) For the purposes of and without limiting subsection (1) —
>
> (*a*) a police officer's or special police officer's reasonable belief that a person is doing or about to do an act which is dangerous to himself is sufficient basis for the police officer's or special police officer's reasonable suspicion that the danger to that person is attributable to a mental disorder; and
>
> (*b*) "special police officer" has the same meaning as in section 2 of the Police Force Act (Cap. 235).

44 This amendment entailed two changes. First, the element of a report was removed. Secondly, the element of belief that the danger existed by reason of mental disorder was changed to its being reasonably suspected to be attributable to a mental disorder. While the relevant purpose or Parliamentary intention is to be found at the time the law was enacted (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [35]), a later amendment may sometimes shed light on how the earlier version should be construed. This amendment was largely clarificatory. Its removal of the phrase "reported to be" simply showed that it was not a separate or distinct element, but an unneeded phrase that meant nothing more than "apparent".

(3) Belief held on reasonable grounds

45 Turning to whether the police officer's belief must be held on reasonable grounds, I agree, as the AG has accepted, that he must not only subjectively and honestly believe that the person apprehended poses a danger to himself or others because of his mental disorder but must also have reasonable grounds for that belief. Those reasonable grounds are to be assessed in terms of a lay person's

general understanding. Further, the fact that the section is phrased in terms of a "duty" and not a "power" underlines the legislative concern with public safety, and enjoins a court to give considerable latitude to the police officer's consideration of reasonable grounds.

46 I return to the legislative history to note one further point. A change took place in 1985. Section 7 of the MHCTA broadened the category of persons to whom it might potentially apply. Where s 32 of the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed) ("MDTA 1985") and its predecessors used the phrase "unsoundness of mind", s 7 uses the phrase "mental disorder". Where "unsound mind" was not defined in the MDTA 1985 (or the earlier provisions), the introduction of "mental disorder" in s 7 of the MHCTA was accompanied by a broad definition of "mental disorder" in s 2 of the MHCTA (see [27] above). During the Second Reading of the 2008 Bill, then Minister for Health, Mr Khaw Boon Wan ("Minister Khaw"), explained the change. He noted that the MHCTA defined mental disorder "very widely" because "mental disorder covers a very wide range of mental illnesses" and "the objective of [the] Bill is to ensure that those mentally ill patients who require institutionalised psychiatric care are accorded prompt treatment" (see *Singapore Parliamentary Debates, Official Report* (15 September 2008) vol 85 at cols 93–94).

(4) Danger

47 The AG has contended that it is sufficient if there is danger to property. I do not agree. The provision makes no mention of property damage. Thus, the danger apprehended must be to person. Danger to others however extends beyond the risk of actual physical harm to behaviour that is threatening or grossly invasive of personal space. This would include running at people or

moving into close proximity with another person and then shouting. Indeed, if any actual damage to property occurs this may reasonably be perceived in the circumstances as a precursor to violence against persons and so found a belief that the person who has damaged property is a danger to others.

48 I also consider that the use of the word "danger" implies a degree of imminence, *ie*, that without the police officer's intervention such behaviour is likely to occur within a short time, which I would consider to be a matter of hours rather than days.

49 The legislative history to s 7 of the MHCTA supports my reading that the word "dangerous" in the provision conveys an imminent risk of physical harm to persons. The Mental Disorders Ordinance 1934 (SS Ord No 33 of 1934) ("Mental Disorders Ordinance 1934") was "probably modelled on the provisions of the Mental Treatment Act, 1930, of England and Wales" (*Singapore Parliamentary Debates, Official Report* (28 August 1973) vol 32 at col 1274), which in turn amended several provisions of the Lunacy Acts 1890 to 1922 and the Mental Deficiency Acts 1913 to 1927 that do not presently concern us. Pertinently, s 32 of the Mental Disorders Ordinance 1934 marked a departure from s 15 of the Lunacy Act 1890, which I reproduce below:

> **Lunacy Act, 1890**
>
> **Lunatic wandering at large to be brought before a justice.**
>
> **15.**—(1.) Every constable and relieving officer and every overseer of a parish who has knowledge that any person (whether a pauper or not) wandering at large within the district or parish of the constable, relieving officer, or overseer is deemed to be a lunatic, shall immediately apprehend and take the alleged lunatic, or cause him to be apprehended and taken, before a justice.
>
> (2.) Any justice, upon the information upon oath of any person that a person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, may by order require a

> constable, relieving officer, or overseer of the district or parish where the alleged lunatic is, to apprehend him, and bring him before the justice making the order, or any justice having jurisdiction where the alleged lunatic is.

50 Thus, s 15 of the Lunacy Act 1890 did not stipulate that the person apprehended must be believed to be dangerous but merely that a constable (among specified others) might apprehend a lunatic, defined as "an idiot or person of unsound mind", if he is "wandering at large". The requirement that the person apprehended be believed to be dangerous in s 32 of the Mental Disorders Ordinance 1934 was only introduced in that Ordinance. To this extent, the English jurisprudence surrounding the Lunacy Act 1890 is of limited utility. Of much greater import are the parliamentary debates on the local Ordinances and Acts.

51 Of such parliamentary debates, those on the 2008 Bill are particularly instructive concerning what is meant by the word "danger". Then Member of Parliament for Jurong Group Representation Constituency, Mdm Halimah Yacob, sought clarification on what constitutes dangerous behaviour for the purpose of s 7 of the MHCTA. In response, Minister Khaw stated that "[d]angerous behaviour may include arming oneself with a knife or other sharp object, threatening others, or putting oneself in a precarious position, for example, climbing out of the window to stand on the parapet". At the same time, "[s]ome of [the] social nuisance does not equate to dangerous behaviour [but] simply means that the person is unwell" (see *Singapore Parliamentary Debates, Official Report* (15 September 2008) vol 85 at cols 68, 104–105). It is noteworthy that Minister Khaw cited instances where an individual poses a risk of imminent physical harm to himself or others as examples of dangerous behaviour and contrasted this with "social nuisance". This supports the natural meaning of "danger" which connotes something more than socially odd or

eccentric behaviour that makes others feel uncomfortable. There must be a reasonably imminent risk of physical harm to the person apprehended or others.

Whether Mah was informed of the grounds of his apprehension

52 It is undisputed that Ong informed Mah of the grounds of his apprehension twice: first in the police car from Suntec City to the RLU and after Mah arrived at the carpark of the RLU.[41] In terms of timing, the first was about seven minutes after the apprehension, and the second a further 11 minutes later.

53 Mah contends that it was improper for Ong to have informed him of the grounds of his apprehension only after he had been apprehended.[42] On the other hand, the AG submits that Ong did so as soon as reasonably practicable given that Mah had resisted apprehension[43]. The AG also submits that it was sufficient for Ong to notify Mah that he was being arrested for "unsound mind". This captures the substance of an apprehension under s 7 of the MHCTA.[44]

54 In my view, if Rosli had honestly and reasonably believed Mah to be dangerous, then it would have been lawful to inform him of the ground of his apprehension as Ong did only once he was in the police car, around seven minutes into the journey. I accept that Rosli had originally intended to do so himself once Mah had kept his things following the search of his bag, but that Mah's agitation led to the assessment that he be apprehended first and that the grounds would be told to him only once he was safely in the police car.[45]

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41 DCS at para 109.

42 PCS at para 74.

43 DCS at paras 110–111.

44 DCS at para 112.

45 DCS at para 111.

Whether Rosli honestly and reasonably believed Mah to be "dangerous to himself or other persons by reason of mental disorder"

55 I now turn to the central question of Rosli's belief. Mah submits that Rosli neither honestly nor reasonably believed Mah to be dangerous to himself or other persons by reason of mental disorder. He contends that there was no proof that he pulled a child's hair.[46] The complaint related to Mah's act of touching the child's head.[47] Further, Rosli's claim that Mah spat into a plastic bag was undermined by the fact that Ong did not find a plastic bag containing saliva at the RLU as well as contradicted by the BWC footage.[48] Mah also did not provide inconsistent responses to Rosli[49] and his act of placing his identity card on the bench ought not to have been construed as a symptom of mental disorder.[50]

56 There was also no proof, in Mah's submission, that these acts stemmed from a mental disorder.[51] Mah suggests that Rosli apprehended Mah because of animus against him.[52] Mah suggests that Rosli became annoyed with him because he refused to directly hand his identity card to Rosli and instead placed it on the bench.[53]

57 The AG submits that Rosli honestly believed Mah to be dangerous by reason of mental disorder. The complainant informed Rosli that Mah had

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46 PCS at paras 16–17.

47 PCS at paras 56–57.

48 PCS at paras 13–14.

49 PCS at paras 29–30.

50 PCS at paras 36, 40–42.

51 PCS at paras 24–27, 38–39.

52 PCS at para 43.

53 PCS at paras 44–45.

touched her son's head and did not look mentally well.[54] Rosli's assessment that Mah was agitated, fidgety, defensive and incoherent was supported by the BWC footage[55] and repeated by Rosli to the duty Investigating Officer and his team leader over two phone calls.[56] Although Rosli stated that the complainant accused Mah of pulling her son's hair in an affidavit filed on 13 September 2017, he may not have recalled the details of what the complainant told him with complete accuracy.[57] There is also no reason for Rosli to lie about Mah spitting into a plastic bag.[58] In any event, Rosli already believed that Mah was dangerous to children by reason of mental disorder before the spitting incident.[59]

58 The AG contends that Rosli's belief that Mah was dangerous to other persons was founded on reasonable grounds. Mah was reported to have violated the bodily integrity of a stranger's four-year-old child[60] and Rosli personally observed Mah's erratic behaviour and inconsistent responses.[61]

59 I start by noting that a police officer is not required to verify a complaint received before acting on it. In this case, Rosli was plainly entitled to assume the truth of the complaint in investigating it further by speaking to Mah. In then evaluating whether Mah was dangerous by reason of any mental disorder, he was entitled to take into account the complaint made.

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54 DCS at paras 72–73.

55 DCS at para 73(b).

56 DCS at para 73(c).

57 DCS at para 76(b); AB at p 302 (para 8).

58 DCS at para 87.

59 DCS at para 88.

60 DCS at paras 79–80, 83.

61 DCS at para 84.

60 In my view, I must then assess how it came to be that Rosli claimed in his affidavit dated 13 September 2017 that Mah was "mumbling to himself at times", an assertion that he later withdrew. The AG urges[62] me to find that this was just a lapse of memory occurring when he made that affidavit, and thus not relevant to the question of the honesty and reasonableness of his belief at the time the apprehension took place on 7 July 2017.

61 The AG's submission is supported by the fact that Rosli did not say that Mah was "mumbling to himself" during his radio call to his superiors. Rosli's transcribed description given to his superiors of Mah's behaviour is brief to the point of inarticulacy, saying only "he a bit seven also … got … a bit … don't know la … this guy".[63]

62 However, I cannot accept that the assertion that Mah was "mumbling to himself" was only made by Rosli two months later. A case note made by Dr Eng Yong Tai Leonard ("Dr Eng") from IMH on 8 July 2017 at 12.43pm[64] recorded that he was told by IO Tan that "when police spoke to him on site – he was non-responsive and mumbling to himself" and "hence, they arrested him – as he's mumbling to himself and not of sound mind". IO Tan testified when questioned about this that there was a call but he could not recall whether he said this.[65] I find that he did say what was recorded by Dr Eng and that this assertion must have ultimately come from Rosli as the person who spoke to Mah on site. It may have come indirectly *via* Ong, as IO Tan testified that he did not

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62 DCS at paras 98–99.

63 AB at p 114.

64 P3.

65 10/8/22 NE 75–76.

speak directly to any of the arresting officers.[66] Importantly, this case note made the day after shows not only that Rosli had asserted that Mah was "mumbling to himself" but that this fact was considered by IO Tan to be relevant to the assessment whether Mah had any mental disorder.

63 My conclusion is supported by common sense. Being agitated, defensive or inconsistent may well be the responses of a person of perfectly sound mind who is questioned by the police. It was the element of mumbling to himself that indicated to persons untrained in psychiatric disorder that Mah might be suffering from a mental disorder.

64 I find that Rosli made up the observation that Mah was "mumbling to himself" and made it on the night of the apprehension. This was not his only embellishment. Rosli also claimed that Mah spat into a plastic bag but this was not captured on the BWC footage nor was any plastic bag containing spit found later. I do not accept the AG's submission that such a despoiled bag might have been in Mah's bag but was overlooked by the police when they searched it at the lock up. Rosli further claimed that Mah described himself as "OCD". Mah has denied doing so. No such description was captured on the BWC footage although there were some interactions that were not captured because the battery apparently ran out. However, on this point I again accept Mah's account. Having heard Mah both as witness and litigant-in-person, this is not the sort of description Mah is likely to have applied to himself. Moreover, it is hard to see how a person describing themselves as OCD would fortify even a lay person's belief that that person was dangerous by reason of mental disorder.

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66 10/8/22 NE 76–77.

65 I conclude that Rosli did not have an honest belief that Mah was a danger to other persons by reason of mental disorder. I find that Mah's behaviour as shown in the BWC footage did not suggest that he was dangerous to others, and as far as soundness of mind is concerned only showed a degree of eccentricity falling far short of appearing mentally disordered. Such eccentric mannerisms however can come across as disrespectful to someone lacking experience or perspective. I find on a balance of probabilities that Rosli, knowing that he had no power to arrest Mah for the matter complained of because it was not an arrestable offence, took a dislike to Mah for his apparently disrespectful conduct, including not handing his identity card directly to him. This is what motivated him to come up with the assertions that Mah was mumbling to himself and spat into a plastic bag.

Whether Rosli is nonetheless entitled to rely on s 25(1) of the MHCTA

66 Mah's position is that Rosli is not entitled to rely on s 25(1) of the MHCTA as he had acted in bad faith. In particular, Mah contends that Rosli made up the claim that Mah was mumbling to himself as a pretext to apprehend Mah. There was no evidence that Mah was mumbling to himself.[67] Yet this assertion was apparently made by IO Tan to Dr Eng.[68]

67 The AG accepts that if Rosli did not genuinely believe Mah satisfied the requirements for apprehension under s 7 of the MHCTA, this constitutes bad faith and Rosli would be unable to rely on the defence under s 25(1) of the MHCTA.[69] That is indeed my finding, and consequently Rosli is not entitled to rely on s 25(1) of the MHCTA.

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67 PCS at para 7.

68 PCS at para 9; P3.

69 DCS at para 92.

Issue 2: Whether s 7 of the MHCTA enjoins the police to take Mah immediately to a medical practitioner

68 Mah submits that s 7 of the MHCTA enjoins the police to take Mah immediately to IMH (or Singapore General Hospital) after he was apprehended. He should not have been brought to the RLU.[70]

69 The AG submits that an officer need not bring a person apprehended to IMH in the shortest possible time. This would be inconsistent with the police officer's choice of bringing the person apprehended to "any medical practitioner" under s 7 of the MHCTA.[71] Moreover, Parliament contemplated that the police can develop procedures to ensure that a person apprehended under s 7 of the MHCTA is safely in custody before referring him for medical assessment and treatment.[72] In this regard, Superintendent Tan Yong Liang, Assistant Director of the SPF's Frontline Policing Division, attested that the police generally will not send an person apprehended to an ordinary hospital or clinic as these premises may not have adequate security measures in place.[73]

70 Rather, under s 7 of the MHCTA, the apprehending officer should take steps from the point of apprehension to bring the person apprehended to a doctor, without neglecting him or keeping him waiting for reasons unrelated to his arrest.[74] It is undisputed that Mah was brought to see Dr Lin at the RLU.[75]

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70 PCS at para 20.

71 DCS at paras 128, 131.

72 DCS at para 130.

73 DCS at para 129.

74 DCS at para 128.

75 DCS at para 129.

71 I accept the AG's contention on this issue. In principle, bringing an apprehended person to see the medical practitioner at the RLU complies with the requirements of the section. He saw Dr Lin, the medical practitioner who was on duty, within an hour of his arrival at the RLU. However, there is a further question of whether he ought to have been treated like a person under arrest for a criminal offence while at the RLU, including by being searched, a point which I consider below at [88].

72 Nonetheless, before leaving this topic, I must note four peculiarities in Dr Lin's medical report dated 12 September 2017.[76] First, in his medical report written more than two months after seeing Mah (during which time by his own reckoning[77] he would have seen many persons apprehended under s 7 of the MHCTA, roughly "a couple every day"), he wrote that Mah "did not seem to be making sense in his conversation and was constantly talking to himself" when no such observation is found in his notes made on 7 July 2017.[78] I did not believe his explanation[79] that somehow he recalled this particular case and so added a critical detail from memory that was not in his contemporaneous note. Apart from my observation of his demeanour when he gave this explanation, the CCTV footage did not support the assertion that Mah was constantly or even sometimes talking to himself. Although there is no sound, Mah appears to look at Dr Lin throughout and seems to be conversing with Dr Lin, as Dr Lin acknowledged after reviewing the footage in court.[80] Secondly, he omitted from his report that Mah complained to him of pain in his abdomen instead saying

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76 AB at pp 291–292.

77 10/8/22 NE 30.

78 Dr Lin's AEIC at pp 7–9.

79 10/8/22 NE 33.

80 10/8/22 NE 37–38.

that he "had no other complaints". In fact, the CCTV footage shows that Mah did speak to Dr Lin about his abdomen as Dr Lin can be seen examining his abdomen. Dr Lin acknowledged this upon reviewing the footage.[81] Thirdly, Dr Lin described Mah as being "ambulant with a normal gait" when the footage shows that Mah was supported throughout by two police officers and Dr Lin appears to have had no real opportunity to observe him walking unaided with a normal gait. Fourthly, the duration of Dr Lin's examination is given as 11 minutes from 10.19pm until 10.30pm, when based on the CCTV footage Mah was in the consultation room for only three minutes and six seconds.

73 While the question of Dr Lin's good faith is not strictly material to the outcome of this case, and he is also not a party to the proceedings, I consider that Dr Lin's inclusion in his medical report that Mah "did not seem to be making sense in his conversation and was constantly talking to himself" raises the concern that he may have embellished his report after the fact to justify Mah's apprehension by the police. The scheme of the MHCTA depends on the integrity of the medical practitioner just as much as it depends on the integrity of the apprehending officer.

Issue 3: Whether Mah suffered personal injury or damage to his property

Whether Mah was punched in his abdomen when he was apprehended

74 Mah claims that he was punched in the abdomen when he was apprehended. He points to the CCTV footage of him experiencing pain in his abdomen at the RLU as evidence of this.[82] He also submits that he suffered

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81 10/8/22 NE 34–35.

82 PCS at para 61.

physical injuries on his hand as a result of his apprehension. Mah contends that these injuries cannot be justified as Mah's apprehension was unlawful.[83]

75 In response, the AG submits that the arresting officers did not punch Mah in the abdomen. Mah's claim is unsupported by the BWC footage.[84] While Mah claims that the punch caused him lasting pain and prompted him to visit Dr Lin, this could not be believed. Mah only visited Dr Lin more than one hour after the purported punch and did not voice or exhibit any signs of discomfort before this.[85]

76 Relatedly, the AG contends that Mah has not proven that the bruises on his forearms or upper arms were sustained during his time in police custody. The photographs of these bruises were taken two days after the police handed custody of Mr Mah to IMH[86] and Dr Wing did not note any injuries on Mah's arms when she examined him at IMH on 8 July 2017.[87] As for the abrasions on Mah's wrists, these are minor and arose from the course of apprehending Mah, who was resisting arrest.[88]

77 A punch to the abdomen if it happened would exceed the reasonable force required to apprehend Mah. I accept that he did complain to Dr Lin about pain in his abdomen. However, having reviewed the BWC footage of the apprehension and heard the testimony of Mah as well as those officers who apprehended him, I do not find that he was punched. I also do not find that he

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83 PCS at para 18.

84 DCS at para 118, 120; AB at pp 278–279.

85 DCS at paras 121–122.

86 DCS at paras 123–124; 11/8/22 NE 3.

87 DCS at para 124, AB at p 284.

88 DCS at para 126.

suffered substantial bruising. To the extent that he suffered minor bruising or minor abrasions, this flowed from the apprehension itself. As I have held that the apprehension was unlawful, his suffering them must be considered when I assess damages.

78 I would add that this does not mean that Mah did not feel discomfort or pain, including in his abdomen, and may have attributed this wrongly to a punch rather than simply to his being forcibly restrained in a manner that would have been lawful had the apprehension itself been lawful.

Whether Mah suffered injury to his head, wrists and arms while he was escorted between cells in the RLU

79 Mah further claims that he suffered injury to his head, wrists and arms while he was escorted between cells in the RLU. He claims that he hit his head against the door to Cell 24P after Special Constabulary Corporal Shaik Tofiq s/o Sheik Rashid ("Tofiq") handcuffed him through the slot in the cell.[89] He also claims that Tan intentionally injured his wrist and arms while escorting him between Cells 24P and 30S. Mah is seen examining his wrists after returning from Cell 30S.[90]

80 The AG denies that Mah sustained any injuries to his head, wrists and arms. Tofiq and Special Constabulary Corporal Thong Zhi Kang attested that Mah kept holding out and withdrawing his hands through the slot in the cell door while they attempted to handcuff him. For this reason, Tofiq had to hold onto Mah's hands through the slot long enough for Mah to be handcuffed. While Mah forcefully withdrew his hands thereafter, he did not hit his head against the

89 PCS at para 63.

90 PCS at para 62.

cell door.[91] Their testimony is supported by the CCTV footage[92] and the fact that Mah did not inform Dr Wing about this purported head injury when she examined him at IMH.[93] In a similar vein, the CCTV footage shows that Tan did not pull Mah's handcuffs or pinch Mah while escorting him between cells in the RLU.[94]

81 On this point, the CCTV footage does not support Mah's allegations. For this reason, I do not find that they have been made out. Mah simply experienced discomfort and marking of his skin from the ordinary manner in which handcuffs are used. I specifically find that Tan did not intentionally injure Mah while escorting him.

Whether Mah consented to Teo searching his bag and accessing his mobile phone outside Suntec City

82 Mah does not deny that he consented to Teo searching his bag and accessing his mobile phone outside Suntec City. However, he submits that his consent was vitiated by Rosli's threat of arrest.[95]

83 The AG submits that Rosli informing Mah that he would be brought back to the police station if he did not cooperate did not vitiate Mah's consent.[96]

84 The difficulty in the AG's submission on this point is that the complaint received by the police against Mah was not of an arrestable offence nor was

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91 DCS at para 149.

92 DCS at para 150.

93 DCS at para 152.

94 DCS at paras 156–161.

95 PCS at paras 70–71.

96 DCS at paras 48–49.

there any submission that Mah was otherwise subject to arrest without warrant pursuant to s 64 of the CPC. If he was, then it would be different. A police officer who considers that he is entitled to lawfully arrest someone may properly suggest to that person that he voluntarily open his bag or turn out his pockets so that such cooperation may resolve the police officer's concerns and eliminate the potential grounds for arrest. It is not right however to threaten an arrest if the police officer knows he is not entitled to make an arrest.

85 Moreover, searching Mah's bag and accessing his mobile phone had no bearing on any assessment of whether he was had any mental disorder.

Whether Ong searched Mah's bag without lawful justification at the RLU

86 Mah's claim that Ong searched his bag without lawful justification at the RLU is premised on his claim that the police ought to have taken Mah directly to a medical practitioner, and not to the RLU.[97]

87 Contrastingly, the AG contends that a police officer may search an individual apprehended under s 7 of the MHCTA under s 78(1) of the CPC.[98] Further authority may be found in reg 11(3) of the Prisons (Police Lock-ups) Regulations 2013.[99]

88 The difficulty with the AG's submission is that s 78(1) of the CPC applies only to arrests under or without warrant and not to an apprehension under s 7 of the MHCTA. There is nothing in the MHCTA that authorises the police to search an apprehended person. In my view, bringing Mah to the RLU

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97 PCS at para 75.

98 DCS at paras 140–142.

99 DCS at paras 140, 144.

should have been for the purpose of his seeing a medical practitioner at the RLU or as a brief holding point before seeing a designated medical practitioner at IMH or elsewhere. He should not have been treated as if he had been arrested for a criminal offence, and so he and his bag should not have been searched without his consent.

Whether Rosli damaged the zipper of Mah's bag

89 Turning to Mah's claim that Rosli damaged the zipper of his bag, Mah submits that this is evidenced by the fact that the zipper was in working condition before but not after his encounter with the police.[100]

90 The AG denies Mah's claim. Ong and Syahirah's BWC footage show that Rosli did not touch Mah's bag after Mah was apprehended.[101] Nor did Rosli touch Mah's bag before Mah's apprehension. On the contrary, he asked Mah to pack up his things when informing him of his arrest.[102] This is also supported by Ong's testimony that he was able to zip and unzip Mah's bag normally at the RLU.[103]

91 In view of the BWC footage that I have reviewed, I do not find that this allegation has been proved.

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100 PCS at para 68.

101 DCS at para 134.

102 DCS at para 135.

103 DCS at para 136; Ong's AEIC at [33].

Issue 4: Whether the police's responsibility for Mah's detention ended upon his transfer to IMH

92 In relation to Mah's claim that the police prevented the IMH staff from discharging Mah, Mah contends that the doctors and nurses at IMH informed him that they could only release him with the police's permission.[104] The IMH staff were also coloured by the fact that IO Tan informed Dr Eng that Mah was mumbling to himself, when this was false.[105]

93 The AG submits that Mah has not adduced any evidence to support his claim that the police had control over Mah's detention at IMH.[106]

94 In general, the police's responsibility ends upon conveyance of an apprehended person to IMH. It is also clear that in this case IMH after appropriate follow up including observing Mah for no more than a reasonable period reached the conclusion that Mah was not suffering from mental disorder and should not be detained further.

Issue 5: Damages in relation to Mah's claims that have been made out

95 Mah claims damages for all his pleaded causes of action. Mah proposes the sum of $4,620.95. He arrives at this figure by reference to what an individual who was wrongly arrested on four occasions in Malaysia, was awarded in compensation.[107]

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104 PCS at para 65.

105 PCS at para 66.

106 DCS at paras 164–166.

107 PCS at para 80.

96 The AG accepts that Mah may in principle claim general damages for false imprisonment, assault and battery.[108] The AG suggests that if the claims are made out Mah is entitled to general damages of not more than $15,000 in respect of his false imprisonment claim and not more than $4,000 in respect of his claims of assault and battery. This accords sufficient weight to the superficial nature of his injuries.[109] That said, Mah should not be awarded any damages in relation to his purported mental suffering. He has not adduced sufficient evidence to establish this head.[110]

97 The AG also suggests that Mah is entitled to nominal damages of $1 in respect of each of his other claims.[111] He should, moreover, not be awarded aggravated damages. Mah's allegations that the police acted arbitrarily and oppressively formed the basis of his claims and do not give rise to an enhanced claim for aggravated damages.[112] In any case, as I have noted at [22], Mah did not pursue punitive or aggravated damages.

98 Of Mah's claims I have accepted that he was unlawfully apprehended and that, even if he had been lawfully apprehended, he and his bag were not subject to search in the same way as for a person arrested under the CPC. I would dismiss the rest of his claims.

99 I award Mah general damages of $20,000 for false imprisonment. In relation to this figure which is higher than that put forward by the AG, I have

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108 DCS at paras 170–173.

109 DCS at paras 176–177.

110 DCS at paras 178–180.

111 DCS at paras 181–184.

112 DCS at paras 185–188.

taken into account Mah's being handcuffed and kept in a police cell, rather than taken directly to IMH, an alternate course of action which would have been less stressful for him than what took place. I have also taken into account the minor abrasions caused during the apprehension and the marks caused by the handcuffs as part of their ordinary use. Lastly, I have also considered the invasions of his privacy when his bag was searched and his mobile phone accessed.

Costs

100 Mah has succeeded against Rosli but failed against Tan. I will hear parties on costs, and prior to the hearing, parties are to file submissions of no more than ten pages in length within 14 days.

Conclusion

101 The MHCTA places a duty on police officers to apprehend persons believed to be a danger to themselves or others by reason of mental disorder. It is an important duty that safeguards the public interest, and particularly public safety. It depends on police officers doing their duty in good faith. While latitude must be given to police officers who after all are not medically trained and have to fulfil their duty under operational conditions, I am satisfied that in this case there was an individual lapse on the part of the police officer concerned that resulted in Mah being falsely imprisoned, albeit for less than a day.

Philip Jeyaretnam
Judge

The plaintiff in person;
Joel Chen Zhi'en, Beulah Li Sile and Ho Jiayun (Attorney-General's Chambers) for the defendants.
