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Public Prosecutor
v
Lim Yee Hua and another appeal

[2017] SGHC 308

High Court — Magistrate's Appeals Nos 9019 of 2017/01 and 9019 of 2017/02
Chan Seng Onn J
7 July 2017

Criminal Law — Offences — Hurt — Road rage

Criminal Procedure and Sentencing — Sentencing — Principles — Road rage

1 December 2017 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The resort by road users to violence in a foolhardy bid to settle any differences that arise in the course of the shared use of our roads is an event that has always been greeted with the sternest of rebukes from our courts. Where the perpetrator of such brutish conduct on the roads causes injury to the victim, he would generally be charged under s 323 or s 325 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") for voluntarily causing hurt or grievous hurt, depending on the severity of the injuries caused. Before the courts, he could then be branded a "road bully" and the incident would be cast as an episode of

"road rage" violence. The courts, in turn, would express their disapproval by invariably imposing upon the perpetrator a suitably deterrent sentence.

2 This approach towards sentencing offences involving road rage violence was first given lucid expression more than two decades ago by Yong Pung How CJ, when deciding two separate Magistrate's Appeals while sitting in the High Court. Yong CJ's authoritative pronouncements in the cases of *Ong Hwee Leong v Public Prosecutor* [1992] 1 SLR(R) 458 ("*Ong Hwee Leong*") (at [6]–[7]) and *Public Prosecutor v Lee Seck Hing* [1992] 2 SLR(R) 374 ("*Lee Seck Hing*") (at [11]–[12]), which I will subsequently refer to in greater detail (at [22]–[23] below), made it abundantly clear that the primary sentencing consideration for offences involving road rage violence was both general and specific deterrence, and that this was predicated upon the desire to protect road users from violence stemming from traffic-related skirmishes.

3 Today, the fundamental sentencing consideration of deterrence continues to undergird the sentencing for offences involving road rage violence. Having said that, there are two corollary questions that appear to have been the subject of inconsistent treatment by the courts: first, whether all instances of violence that arise on the roads should be shoehorned into the Procrustean bed of road rage offences; and second, whether the overriding policy imperative of deterrence should necessarily lead to a custodial sentence for road rage offences. These questions call for a re-examination of the attendant principles that should inform the sentencing of offences involving road rage violence. The present pair of cross-appeals that I heard on 7 July 2017 provides me with the opportunity to address these issues.

Background

4 In the current proceedings, Mr Lim Yee Hua ("Lim"), a 37-year-old male Singapore citizen, faced two charges under s 323 of the Penal Code for voluntarily causing hurt to the victim, Mr Basil Ho Ping Yong ("Basil"), who is a 50-year-old male Singapore citizen. While one charge was brought against Lim for punching Basil on the right side of his face, causing his spectacles to be knocked off and thereby resulting in an abrasion to his left eyebrow ("the first charge"), a second was brought against Lim for punching Basil on the back of his neck ("the second charge"). Both incidents occurred on the same day at about the same time but at different locations. Lim claimed trial to both charges. Following the trial below, the District Judge convicted Lim on both charges and imposed a fine of S$4,000 (in default four weeks' imprisonment) for the first charge and a fine of S$5,000 (in default five weeks' imprisonment) for the second charge: see *Public Prosecutor v Lim Yee Hua* [2017] SGMC 6 ("the GD") at [8]–[9].

5 Both Lim and the Prosecution filed appeals against the District Judge's decision. Magistrate's Appeal No 9019 of 2017/01 is the Prosecution's appeal against sentence on the grounds that the sentences imposed were wrong in principle and manifestly inadequate.[1] As for Magistrate's Appeal No 9019 of 2017/02, although Lim initially appealed against both conviction and sentence,[2] his appeal was subsequently limited to an appeal against only his conviction for the first charge.[3] Counsel for Lim confirmed this in his written submissions.[4]

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1 Prosecution's Petition of Appeal dated 20 March 2017; ROP vol 1, pp 11–13.

2 Lim Yee Hua's Notice of Appeal dated 23 January 2017, ROP vol 1, pp 8–10.

3 Lim Yee Hua's Petition of Appeal dated 21 March 2017; ROP vol 1, pp 14–19.

4 Lim Yee Hua's Written Submissions dated 27 June 2017, para 2.

6 Having heard the submissions from both parties during the hearing on 7 July 2017, I did not think that the District Judge's decision to convict Lim on the first charge was wrong in law or had been reached against the weight of the evidence before him. Specifically, I saw no reason to disturb the District Judge's findings of fact that Basil was a credible witness and that Lim lacked credibility. I thus dismissed Lim's appeal against conviction.[5]

7 As for the Prosecution's appeal against sentence, I took the view that the authorities cited by the parties did not speak with one voice on the correct approach to adopt in sentencing offences involving road rage violence. I thus reserved judgment to consider more carefully the questions posed earlier (at [3] above) and their implications on the appropriate sentence to be imposed on Lim. I should note that after the hearing, counsel for Lim brought further arguments regarding the second charge to my attention through a letter sent to the registry on 10 July 2017.[6] The Prosecution responded with a letter of their own the next day.[7] I took in all the arguments made, but did not think it necessary to seek any further submissions. I now give my judgment on the Prosecution's appeal against sentence, commencing with a brief overview of the relevant facts.

The relevant facts

8 On 11 July 2014, at about 7.30pm, Lim was driving his car along Canberra Road towards Canberra Link.[8] With him in the car at that time were his wife, maid and children. As Lim approached the slip road linking Canberra

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5 Minute Sheet dated 7 July 2017.

6 Letter from Oon & Bazul LLP dated 10 July 2017.

7 Letter from the Attorney-General's Chambers dated 11 July 2017.

8 ROP vol 1, p 282.

Road to Canberra Link, Basil, who had just crossed Canberra Road, was also just about to start crossing the zebra crossing located at that slip road by foot.[9] When Basil was about two to three steps into the zebra crossing, Lim drove his car through the zebra crossing without stopping to give way to Basil, thus almost hitting him.[10]

9 Upset at what just happened, Basil responded by using his open palm to hit the top of Lim's car with "light to moderate force",[11] before continuing to cross the zebra crossing and make his way up a flight of stairs towards Block 503B Canberra Link. When Lim heard the loud thud on the roof of his car, he immediately pulled over at the side of the slip road, alighted from his car, and gave chase after Basil. Lim managed to catch up with Basil near a lamp post at the foot of Block 503B Canberra Link, which was about 30m away from the zebra crossing.[12] There, the parties got involved in a heated verbal exchange. During the confrontation, Lim shouted and hurled vulgarities at Basil, demanding to know why he had hit his car.[13] Lim then grabbed Basil's shirt and pushed Basil, causing him to lose his balance. At this time, a male elderly passer-by intervened and attempted to defuse the situation by advising both parties to calm down. However, his efforts were to no avail.[14] Lim then swung his left fist at Basil's face, grazing the right side of his face. The blow knocked off Basil's spectacles, causing an abrasion to Basil's left eye brow. Basil's spectacles, which flew off to his left, became badly bent out of shape ("the first

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9 ROP vol 1, p 73.

10 ROP vol 1, p 74.

11 ROP vol 1, p 93.

12 ROP vol 1, pp 77, 96.

13 ROP vol 1, p 77.

14 ROP vol 1, pp 99–100.

incident").[15] The same elderly passer-by helped to retrieve Basil's spectacles and pass it back to him.[16]

10 In response to being hit by Lim, Basil informed him that he would be making a police report, took out a writing pad, and walked back towards the zebra crossing where Lim had stopped his car. Lim followed Basil back to his car. Basil then took down Lim's car plate number. As Basil was attempting to leave the scene, Lim stood between him and the flight of stairs leading back to Block 503B Canberra Link, blocking his way and continuing to shout and hurl expletives at Basil. Lim then lunged towards Basil, reaching out to grab a chain that he wore around his neck. As a result, Basil's chain broke and fell to the ground, scratching his neck at the same time. As Basil was bending down to look for his chain, Lim then punched Basil on the back of his neck ("the second incident"). Basil felt sore as a result of the punch. Immediately after, Basil ignored Lim and continued to look for his chain, while Lim returned to his car and drove off.[17] The second incident was witnessed by one Mr Mark Chen Qunjing, a passer-by who happened to be in the vicinity of the zebra crossing.[18]

The decision below

11 As I have already dismissed Lim's appeal against conviction, I set out the District Judge's reasons only for the sentence imposed on Lim in respect of both charges. During the trial below, the Prosecution submitted for a short custodial sentence without specifying the length of the sentence sought, while counsel for Lim submitted for the imposition of an aggregate fine of S$5,000:

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15 ROP vol 1, pp 78–79.

16 ROP vol 1, pp 78, 99.

17 ROP vol 1, pp 79–82.

18 ROP vol 1, pp 244–247.

the GD at [115]–[116]. The District Judge disagreed with both parties' submissions, and instead imposed a global fine of S$9,000 (in default nine weeks' imprisonment): the GD at [121].

12 In arriving at his decision, the District Judge first agreed with the Prosecution that Lim's actions were disproportionate to any possible provocation that Basil might have made: the GD at [126]. However, the District Judge recognised that the evidence showed that Lim's actions appeared impulsive rather than calculated, and that while his actions were deliberate, they were certainly not premeditated, planned nor prolonged in any way: the GD at [124]–[125].

13 Second, the District Judge gave weight to the fact that the injuries suffered by Basil as a result of the two incidents were minor ones for which no medication was required, and rejected the Prosecution's submission that the injuries could have been severe because the attacks were carried out against vulnerable parts of Basil's body. In the District Judge's view, the law should always look at the actual outcome of an offender's actions and not merely at the manner in which the offender acted. In any event, the District Judge found it speculative to suggest that Basil may have suffered more serious injuries if he had not taken any evasive action because there was no evidence to show that great force was used by Lim against Basil, and it was clear that only two punches had been thrown at Basil. Further, the District Judge held that there were ample case authorities showing that the mere fact that a blow had been directed at Basil's head or neck region should not automatically translate to a custodial sentence being imposed: the GD at [131]–[133].

14 Third, the District Judge considered that a sufficiently high fine for each of the two charges was a fair and proportionate punishment because it appeared

that the investigations alone had exacted a toll on Lim both financially and in terms of his lack of career advancement: the GD at [142]. Also, a custodial sentence would have sounded a death knell to Lim's career in the SAF and would lead to his loss of over S$100,000 in accrued retirement benefits, which was "by any standard … too expensive a price for [Lim] to pay for what was a moment of sheer folly when he lost control of his temper": the GD at [143]–[144], quoting *Public Prosecutor v Lai Yew Sing* [2008] SGDC 94 at [17].

15 Finally, the District Judge agreed with the submissions of counsel for Lim that the present case was "not a typical road rage case"; whereas "typical" road rage cases involved incidents that take place on the road between drivers, where there would be the additional concerns of danger or disruption posed to other road users as a result of the offences, the present case merely involved a pedestrian being struck after the accused driver had overreacted to a trivial matter: the GD at [145]–[147].

16 As for the sentence for each of the individual offences, the District Judge imposed a fine of S$4,000 (in default four weeks' imprisonment) for the first charge because he was of the view that the facts and considerations surrounding the first charge were highly similar to those in the case of *Public Prosecutor v Lawrence Subhas Bose* [2009] SGDC 275, where the same sentence was meted out. In respect of the second charge, the District Judge imposed a fine of S$5,000 (in default five weeks' imprisonment) because the second incident was clearly a separate transaction from the first, and a higher sentence should be imposed for the second charge compared to the first. The higher sentence for the second charge was in turn justified on the basis that the second incident involved Lim punching Basil when he was in an even more defenceless and vulnerable position than during the first incident and also involved Lim striking

Basil when he had already been injured (albeit slightly) by Lim only a short time earlier: the GD at [151]–[153].

Arguments on appeal

17 The Prosecution submits that the fine imposed by the District Judge is manifestly inadequate and that the global sentence should be enhanced to an appropriate custodial term. To this end, the Prosecution relies on the following four main grounds:

(a) First, the District Judge erroneously concluded that a custodial sentence was not warranted on the basis that the present case was "not a typical road rage case". Specifically, the Prosecution submits that the District Judge drew artificial distinctions between categories of "typical" and "atypical" road rage cases which possess no meaningful nexus with the *raison d'être* of deterrent sentencing in road rage cases, and wrongly classified the present case as an "atypical" road rage case that called for a lighter sentence.[19]

(b) Second, the District Judge failed to impose a sentence that was in line with the established sentencing practice laid down in *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 ("*Wong Hoi Len*"), as well as the sentencing precedents involving violence on road users who had offered little provocation. The Prosecution argues that where the offence arose out of a traffic dispute and where there was little or no provocation by the victim, the courts have consistently imposed custodial sentences of up to four weeks' imprisonment, even where the

[19] Prosecution's Written Submissions dated 27 June 2017, paras 45–56.

offender had pleaded guilty and shown a degree of regret over the incident.[20]

(c) Third, the District Judge failed to place weight on Lim's thuggish behaviour and unrelenting attacks on the victim, which would warrant a deterrent sentence in the form of a custodial term even if the incidents were not each characterised as a "typical" road rage case.[21]

(d) Finally, the District Judge placed undue weight on various factors which ought not to be considered mitigating. In particular, the District Judge should not have found the fact that Lim's assaults were not premeditated, prolonged and preceded by a dispute, or the fact that Basil's injuries were not serious, to be mitigating. Also, the District Judge placed excessive weight on the potential personal hardship that would be engendered by a custodial sentence, as well as Lim's apparent past exemplary service rendered to the Singapore Armed Forces ("the SAF").[22]

18 In response, Lim submits that the sentence imposed by the District Judge ought to be upheld for the following reasons:[23]

(a) The altercation with Basil was not premeditated, and was triggered by Basil's actions.

(b) Basil suffered only minor and superficial injuries.

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20 Prosecution's Written Submissions, paras 57–59.

21 Prosecution's Written Submissions, paras 60–61.

22 Prosecution's Written Submissions, paras 62–76.

23 Lim Yee Hua's Written Submissions, paras 42–65.

(c) Lim has no antecedents, and cooperated with the authorities fully when called in to assist with investigations.

(d) Lim's career has suffered significantly since investigations against him were commenced, and will be prejudiced irreparably if a custodial sentence is imposed.

(e) A non-custodial sentence is appropriate given that the accused persons in sentencing precedents involving incidents that are not "typical" road rage cases had fines imposed on them.

Issues to be determined

19 Based on the arguments canvassed by the parties, in order for me to decide whether each of the two sentences imposed on Lim should be raised from a fine to a short custodial term, I have identified the following two broad issues for my determination:

(a) When should an incident of violence be labelled as an episode of road rage violence?

(b) What implications on the sentence imposed should follow upon the labelling of an incident of violence as an episode of road rage violence?

20 The first issue requires me to evaluate whether an incident of violence on the roads falls within the category of assaults to which the deterrent sentencing policy that buttresses road rage sentencing (as I have briefly alluded to above at [1]–[3]) should apply. As for the second, I have to consider what this deterrent sentencing policy should entail, specifically whether an incident of violence calls for the imposition of a benchmark custodial sentence just

because it involves road rage violence. The principles extracted from both analyses would in turn inform the appropriate sentence to be imposed for both of Lim's charges. I will thus first address each of these two broad issues in turn, before applying the relevant principles extracted to the facts before me.

My decision

Defining road rage

21 In my view, an incident of violence should be labelled as an episode of road rage violence only where the facts disclose violence perpetrated by road users as a result of real or perceived slights by other road users stemming from differences that arise in the course of the shared use of our roads. The litmus test for whether the deterrent sentencing policy associated with road rage offences should apply for a particular offence of violence is thus whether the violence originates from differences arising through common road use. In other words, the harsh deterrent sanctions for road rage incidents only apply when road users engage in violence *specifically* over disputes that arise from the shared use of our roads. It follows that where incidents of violence happen to break out on the roads, but the cause of the violence has *no nexus to the parties' shared use of the roads*, the road rage deterrent sentencing policy should *not* apply.

22 This understanding of what constitutes road rage is well founded in the early case law enunciating the reasons for the courts' clarion call for general and specific deterrence against road rage offences. In *Ong Hwee Leong* ([2] *supra*), the appellant pleaded guilty to one charge of voluntarily causing hurt by punching the victim, who was a fellow motorist, in the face after the victim had allegedly irritated him by switching on the headlights of his van to high beam.

In dismissing the appellant's appeal against his sentence of one week's imprisonment, Yong CJ observed thus (at [7]):

> This matter arose from what was certainly a trivial dispute. Such minor incidents occur on our roads many times every day. No doubt they are frustrating to those involved. But if, many times every day on our public roads, everyone were to lose his temper and react to the degree the appellant did, all semblance of order would quickly dissipate and only the most violent would prevail. The perceptible trend in this direction deservedly incurs the courts' displeasure and must be determinedly discouraged. Drivers must refrain from alighting from their vehicles and assaulting others simply because those others have annoyed them by their driving or in some other way. …

23 In *Lee Seck Hing* ([2] *supra*), the respondent had pleaded guilty to one charge of voluntarily causing grievous hurt by fracturing the right arm of the victim, who was a fellow motorist. The victim had incurred the respondent's wrath by cutting into his lane while they were both driving along an expressway. The Prosecution appealed against the sentence of one day's imprisonment and a fine of S$4,000 imposed on the respondent. In increasing the sentence to 12 months' imprisonment and three strokes of the cane, Yong CJ held as follows (at [11]–[12]):

> 11 Violent crimes are one of the curses of our society against which it is the primary duty of the courts to protect the public. This is especially so on a small island like Singapore, where citizens live in close proximity to each other: our daily lives are unavoidably intertwined to some extent, making the preservation of order and harmony all the more important.
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> 12 … The court must also be mindful of the need to deter anyone else who would resort with impunity to violence on the roads, especially in view of the deplorable increase in such incidents. Our roads are progressively becoming more crowded each month, as more and more cars add to the traffic, and motorists must simply learn to live with one another. There can be no place on our roads for road bullies. Such persons must be made aware of the severe detestation the law expresses in regard to such crimes. …

24 Gathering together the different strands of Yong CJ's observations made in these two cases, I conclude that Yong CJ's intention was to deter road users from losing their tempers and responding to incidents that arise from the shared use of our public roads with violence, which had become a pressing concern at that time, given that Singapore's high population density and increasing road traffic would inevitably result in the heightened frequency of such incidents on the roads. It is clear from these cases that the imposition of harsh deterrent sanctions for road rage incidents was indeed predicated on the law taking a dim view of road users engaging in violence *specifically* over disputes that arise from the shared use of our roads. It therefore stands to reason that where an incident of violence breaks out on the roads, but the violence has no nexus with the common use of the roads by the public, the deterrent sentencing policy that accompanies road rage violence should *not* apply.

25 For the foregoing reasons, I thus hold that an incident of violence should only be regarded as an episode of road rage violence where the facts disclose violence perpetrated by road users as a result of real or perceived slights by other road users stemming from differences that arise in the course of the shared use of our roads. I now turn to address the appropriate sentencing approach for offences involving road rage violence.

Sentencing for road rage offences

26 In my judgment, the sentence imposed for offences under s 323 of the Penal Code involving road rage violence should be calibrated not only in accordance with the usual considerations that inform the sentencing of s 323 offences (*ie*, the *harm* caused by the offence, the *culpability* of the offender, as well as the applicable non-offence-specific aggravating and mitigating factors),

but also with due regard given to the *deterrent sentencing policy* underlying the sentencing of road rage offences.

27 The sentencing considerations that generally inform the sentencing of offences under s 323 of the Penal Code are trite. The court should first consider the two principal parameters of: (a) the *harm* caused by the offence, which is a measure of the injury that has been caused by the commission of the offence, and is measured in terms of the magnitude of the infringement of the legally protected interests which are implicated; and (b) the *culpability* of the offender, which is a measure of the degree of relative blameworthiness disclosed by an offender's actions, and is measured in relation to the extent and manner of the offender's involvement in the criminal act. The harm caused by the offence would invoke the considerations of the nature and degree of: (a) personal injury directly sustained by the victim, (b) collateral harm or damage caused to other persons or property respectively, and (c) disruption or distress caused to the public. On the other hand, the culpability of the offender would primarily involve an assessment of the manner in which the assault was carried out (*eg*, the duration of the assault, whether the attacks were one-sided or aimed at a vulnerable part of the body, or whether a weapon was used). Following this, the court should then take into consideration the applicable aggravating and mitigating factors that may not relate to the commission of the offence *per se* in order to arrive at a sentence that best fits the facts (*eg*, whether the offender is a first-time offender, whether the offender pleaded guilty and whether the offender has shown remorse in any other way). Such an approach to sentencing is not unique to the present offence, and has frequently been applied in a wide variety of offences: see generally, *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [33], *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [19], *Lim Ying Ying Luciana v Public Prosecutor and another appeal* [2016] 4 SLR 1220 at [28], *Public Prosecutor v Koh Thiam*

Huat [2017] SGHC 123 ("*Koh Thiam Huat*") at [41]–[43] and *Stansilas Fabian Kester v Public Prosecutor* [2017] SGHC 185 at [74] ("*Stansilas Fabian Kester*").

28 Additionally, it has been recognised by Chan Sek Keong CJ that for typical instances of voluntarily causing hurt, "a custodial sentence is generally not imposed for a s 323 offences when: (a) the offender's actions were not premeditated; (b) the victim's injuries were minor; and (c) the altercation lasted for only a short time" (*Public Prosecutor v AOB* [2011] 2 SLR 793 at [11], citing *Sim Yew Thong v Ng Loy Nam Thomas and other appeals* [2000] 3 SLR(R) 155 *per* Yong CJ).

29 However, when an offence committed under s 323 of the Penal Code involves road rage violence as defined in the manner that I have set out earlier in this judgment (see [21]–[25] above), *ie*, violence that stems specifically from conflicts that arise in the course of common road use, the deterrent sentencing policy underlying road rage violence must also apply. According to this sentencing policy, all road users are expected to exercise self-restraint, de-escalate conflict and amicably resolve their differences when a conflict arising from the shared use of the roads arises. Those who are unable to adhere scrupulously to this paradigm of road use conduct will be subject to deterrent sentences, on top of the usual sentencing considerations that accompany the particular offence committed. Put another way, ungentlemanly conduct arising in the course of the use of the roads, bad driving, breach of road traffic rules on the part of the victim and even serious traffic accidents caused by the victim would be insufficient to amount to provocation that justifies any act of causing hurt to the victim (or, indeed, any act of mischief causing damage to the victim's property); on the contrary, a violent reaction to such instances of road use would attract the deterrent sentencing policy underlying road rage violence.

30 I should add that whether or not a particular incident of road rage violence crosses the custodial threshold is ultimately a fact-specific enquiry. Obviously, where the harm caused is great and the culpability of the offender is high, a stiff imprisonment term is likely to follow. Conversely, where the harm caused is minimal and the culpability of the offender is low, a fine would probably suffice. Beyond the demarcation of these two situations at the two opposite ends on the harm-culpability continuum, I propose to do no more than reiterate the following words of See Kee Oon J in *Koh Thiam Huat* ([27] *supra*) (at [42]):

> Situated between these two obvious extremes are myriad cases of varying levels of harm and culpability, and it would not be fruitful to attempt to lay down too fine a rule. It suffices to state that the role of a sentencing court is to appreciate the facts in each case and properly situate the case before it along the continuum of severity, having regard to both the level of *harm* and the accused's *culpability*, as well as the applicable *mitigating and aggravating factors*.
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> [emphasis in original]

31 Before I turn to apply this sentencing approach to the present facts of the appeal, there are two submissions concerning the existing sentencing practice for road rage offences that I should deal with. They are:[24]

> (a) first, the case of *Wong Hoi Len* ([17] *supra*) noting (at [19]) that in typical road rage cases, the sentences that have been imposed for typical road rage cases range between one to three months' imprisonment (which the Prosecution refers to as the *benchmark sentence*) where the victim's injuries are not particularly serious and the accused is a first-time offender pleading guilty; and

[24] Prosecution's Written Submissions, para 57.

(b) second, the cases of *Ong Hwee Leong* ([2] *supra*) and *Lee Seck Hing* ([2] *supra*) requiring that a custodial sentence should always be imposed (which the Prosecution alludes to as a *starting point*) for offences involving road rage violence.

32 It is germane at this point for me to clarify the precise meaning of the terms "benchmark sentence" and "starting point", which in fact refer to two types of guideline judgments that courts may rely on to lay down the presumptive sentence to be imposed for the commission of an offence in defined factual scenarios: see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [25]. In *Terence Ng*, the Court of Appeal, in the context of making some general observations about the basic nature and structure of sentencing guidelines, stated that the "single starting point" approach of guideline judgments is an approach that "calls for the identification of a notional starting point which will then be adjusted taking into account the aggravating and mitigating factors in the case" (at [27]). As for the "benchmark" approach, the court will identify an "archetypal case (or a series of archetypal cases) of the offence and the sentence which should be imposed in respect of such a case" (at [31]).

33 Given that the Court of Appeal has recognised that both types of guideline judgments are distinct sentencing approaches, I shall deal with each separately, beginning first with the "benchmark" approach adopted in *Wong Hoi Len* ([17] *supra*).

Wong Hoi Len *does not lay down a benchmark sentence of one to three months' imprisonment for road rage offences*

34 On appeal, the Prosecution argues that the case of *Wong Hoi Len* ([17] *supra*) previously laid down an "established sentencing practice" that a sentence

of between one to three months' imprisonment should typically be imposed for offences involving road rage violence.[25] They also refer to this as a "benchmark range proposed by *Wong Hoi Len*".[26] It is thus clear that the Prosecution treats the guidance laid down in *Wong Hoi Len* as a *benchmark sentence*. To my knowledge, it appears that in many cases before the lower courts, *Wong Hoi Len* has indeed been treated as if it was laying down a benchmark sentence for road rage offences. I do not subscribe to this view.

35 In *Wong Hoi Len* ([17] *supra*), V K Rajah J (as he then was) made the following observations (at [19]):

> For purposes of comparison, I also note that ***in typical cases of road rage*** *where an accused is the aggressor, where the victim's injuries are not particularly serious and the accused is a first-time offender pleading guilty,* ***the sentences imposed range from one to three months' imprisonment***. For instance, in *PP v Ong Eng Chong* [2004] SGMC 14, the accused, who had no prior antecedents, pleaded guilty to punching and kicking the victim over a parking incident. The accused was initially sentenced at first instance to ten weeks' imprisonment but this was reduced to four weeks on appeal (*Ong Eng Chong v PP* Magistrate's Appeal No 147 of 2004). In another road rage case, *Neo Ner v PP* Magistrate's Appeal No 113 of 2000, the accused, who was likewise a first-time offender, pleaded guilty to slamming a car door in the complainant's face after a road dispute. The complainant suffered two superficial lacerations. The accused was sentenced to three months' imprisonment and his sentence was upheld by Yong Pung How CJ. Here, it is evident that the custodial sentences imposed in road rage cases have been underpinned by public policy and general deterrence (see, in general, *PP v Lee Seck Hing* [1992] 2 SLR(R) 374).
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> [emphasis added in italics and bold italics]

36 From the above passage, it is clear that *Wong Hoi Len* ([17] *supra*) was not laying down a benchmark sentence of between one to three months'

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25 Prosecution's Written Submissions, para 57.

26 Prosecution's Written Submissions, para 64.

imprisonment for road rage offences. The benchmark sentence that lies at the centre of the analysis in *Wong Hoi Len*, and which is indisputably the *ratio decidendi* of that decision, is the "starting benchmark" of around four weeks' imprisonment for a charge under s 323 of the Penal Code for a simple assault committed against a public transport worker (at [20]). In arriving at that starting benchmark sentence, Rajah J took pains to outline the need for deterrent sentencing of offences committed against public transport workers by emphasising on the significant role played by public transport workers as well as the disconcerting rise in criminal acts targeting public transport workers (at [8]–[18]). Rajah J merely made his observations regarding the one to three months' imprisonment range imposed for offences involving road rage violence for the "purposes of comparison" (at [19]). The reference to road rage offences is thus a mere footnote to the preceding discussion on attacks on public transport workers, and is *obiter dicta*. In the circumstances, it can scarcely be contended that Rajah J had any intention of laying down any kind of benchmark sentence for road rage offences.

37 Even if *Wong Hoi Len* ([17] *supra*) could somehow be construed as laying down a benchmark sentence for road rage offences, I find that the reference by the court in *Wong Hoi Len* to "typical" cases of road rage *per se* may have given rise to the notion of a separate category of "atypical" cases of road rage. This has prompted the lower courts, in the search for grounds on which to depart from the perceived benchmark sentence of one to three months' imprisonment for "typical" road rage cases, to explicate instances of "atypical" cases of road rage that are premised on the drawing of distinctions between "typical" and "atypical" road rage cases. Such distinctions are often problematic because they stray far away from the underlying purpose behind deterrent sentencing for road rage offences, and are in any event premised on artificial and unprincipled differences.

38 This problem is best exemplified in the District Judge's interpretation of what constitutes road rage violence. At the trial below, the District Judge accepted the argument raised by counsel for Lim that a "typical" road rage case was one where the incident of violence "*took place on the road between drivers*, where there would be the additional concerns of danger or disruption posed to other road users as a result of the offences" [emphasis added]: the GD at [145]. In my view, this definition of a "typical" road rage arising from the reference to "typical" cases of road rage is unhelpful. Keeping in mind that the *raison d'être* underpinning harsh deterrent sanctions for road rage incidents is to deter road users from engaging in violence over disputes that arise from common road use, it should logically not matter whether a road rage case is "typical" or "atypical" in the manner defined by the District Judge (which would be dependent on whether the incident of violence eventually takes place on or off the roads or whether the road user in question is a motorist, passenger, cyclist or pedestrian).

39 This analytical confusion caused by the unprincipled distinction between "typical" and "atypical" road rage cases can lead to a spurious differentiation in sentencing outcomes. In the present case, the District Judge appeared to accept the argument made by counsel for Lim that whereas custodial sentences ought to be imposed for "typical" road rage cases, which involve violence erupting only between motorists and only on the roads, fines may be imposed for "atypical" road rage cases, which involve violence erupting amongst road users beyond only motorists and in locations beyond the roads. Such a differentiation in sentencing is unjustifiable because the reasoning inherent in the District Judge's approach – that "typical" road rage cases (as defined by the District Judge) are necessarily more serious than "atypical" road rage cases – is not supported by case law.

40 First, the deterrent sentencing policy for road rage offences applies to incidents of violence that arise between road users who are *not* motorists as much as it applies to incidents of violence arising between motorists. Existing case law makes clear that the deterrent sentencing principle underpinning offences involving road rage violence applies with equal force to *all* road users (and not only motorists). In *Chua Tian Bok Timothy v Public Prosecutor* [2004] 4 SLR(R) 514, the offender, who was a passenger in the car driven by his wife, was charged with voluntarily causing hurt to the victim by punching him in the face after the victim had caused a traffic accident between the both of them by encroaching into the offender's lane along a road. Yong CJ, in affirming the magistrate's decision to exercise his discretion to withhold his consent to composition offered by the offender, emphatically rejected the offender's suggestion that the road rage sentencing policy does not apply to passengers of vehicles in the following unequivocal terms (at [16]):

> … the strict policy against road rage incidents extends to passengers of motor vehicles who resort to violence against other road users, as well as first-time offenders. Counsel for the petitioner argued in his written submissions that this was not the usual situation of what is colloquially known as "road rage" since the petitioner was not the driver of the car. This was a superfluous distinction. This offence arose from a dispute between the petitioner and the victim after a road accident and was clearly a road rage incident. *Moreover, the public policy against road rage incidents where the driver is normally the aggressor applies with equal force in cases where a passenger is the aggressor. Regardless of whether the aggressor is the driver or a passenger, the public interest to be protected is the same – the prevention of sporadic outbreaks of violence on our roads so as to protect our motorists and road users. Thus, the strict policy against road rage incidents includes cases where the aggressor is a passenger.*
>
> [emphasis added]

It is thus clear that the deterrent sentencing policy for road rage offences also extends to road users beyond drivers.

41 Second, contrary to the District Judge's assumption, an incident of road rage violence in which the act of violence *per se* does not take place on the roads is also punished just as severely as incidents where the act of violence ultimately occurs on the roads. This is underscored by the plethora of cases in which the acts of violence committed by the perpetrator occur in a car park (and not on the roads *per se*): see *Public Prosecutor v Koh Seng Koon* [2001] SGDC 90, *Public Prosecutor v Teo Eu Gene* [2010] SGDC 234 and *Public Prosecutor v Eddy Syahputra* [2012] SGDC 214. In these cases, the courts acknowledged that the deterrent sentencing policy that informs the sentencing of offences involving road rage violence applied with equal force to the cases before them.

42 For the reasons stated above, I find that *Wong Hoi Len* ([17] *supra*) should not be treated as having laid down a benchmark sentence of between one to three months' imprisonment for offences involving road rage violence. Also, even if it does, I find the bifurcation of road rage cases into categories of "typical" and "atypical" cases to be unhelpful for the purpose of sentencing, and it should hence be avoided.

Ong Hwee Leong *and* Lee Seck Hing *should not be regarded as setting down mandatory custodial sentences as a starting point for all road rage offences*

43 Next, I consider the "single starting point" approach apparently adopted in *Ong Hwee Leong* ([2] *supra*) and *Lee Seck Hing* ([2] *supra*). In these cases, Yong CJ not only registered the courts' disapproval of the rising trend of road rage incidents, but also effectively declared mandatory custodial sentences for all offences involving road rage violence. In other words, Yong CJ regarded custodial sentences as a *starting point* for all road rage offences.

44 It is useful for me to first set out the relevant portions of the two cases in question. In *Ong Hwee Leong*, Yong CJ held thus (at [6]–[7]):

> 6 … My attention was also drawn to the judgment of Rajendran JC in Fred Khoo Chin Chye v PP [1990] No 6 CLAS News 28 in which, after referring with approval to Lord Lane CJ's observations in R v Hassan; R v Schuller (1989) RTR 129 he said:
>
> > Resorting to violence over trivial traffic matters has been an unpleasant feature on our roads. *Such conduct cannot be condoned and the trial judge cannot be faulted for having taken the view that a prison term was called for in order to prevent the accused and other like-minded motorists from committing such offences. I am therefore unable to accede to counsel's plea that only a fine be imposed.*
>
> 7 … *I therefore adopt unreservedly Lord Lane CJ's view in Hassan and Schuller that* ***prison sentences ought to follow*** *this sort of incident.* Further, this particular display of violence was deliberate and out of all proportion to the irritation, and the incident was in any case started by the appellant himself. One week's imprisonment clearly could not in the circumstances be manifestly excessive. …
>
> [emphasis added in italics and bold italics]

In *Lee Seck Hing*, Yong CJ held as follows (at [12]):

> … There can be no place on our roads for road bullies. Such persons must be made aware of the severe detestation the law expresses in regard to such crimes. *They must not be allowed to go away thinking that they can beat up somebody else on the slightest provocation for the price of a few thousand dollars. If this sort of incidents occur, when they get out of their vehicles and assault others who may have aggravated them by their driving or for any other reason,* ***prison sentences must now follow where the offence is "voluntarily causing hurt" under s 323 of the Code***, and where the offence is the more serious one of "voluntarily causing grievous hurt" under s 325 of the Code, caning should be imposed.
>
> [emphasis added in italics and bold italics]

45 While I recognise the pressing need to broadcast an unreserved message of deterrence to the public at the time those decisions were issued, I respectfully take the view that it should not invariably be the case that a custodial term must be imposed for *all* offences involving road rage violence. An offence of voluntarily causing hurt under s 323 of the Penal Code which arises out of road

rage can involve a wide variety of possible fact situations. The fact that road rage is involved will mean that the policy considerations of a deterrent sentence will obviously kick in. Nevertheless, all the relevant circumstances of the case must still be considered in order to mete out a fair and appropriate sentence.

46 In 2008, Parliament passed the current iteration of the Penal Code, which featured an increase in the maximum fine that the court may impose in respect of an offence under s 323 of the Penal Code from the previous S$1,000 to the present S$5,000. Indeed, the increase in fines across the board in the Penal Code was expressly noted by the then Senior Minister of Home Affairs Assoc Prof Ho Peng Kee during the Second Reading of the Penal Code (Amendment) Bill (Bill 38 of 2007) in 2007, where he stated that "[w]e have increased fines so that they reflect not just present-day values but also what the courts have commented, to *give them greater latitude and flexibility to impose a proper fine so that the imprisonment term need not be so high, or no imprisonment term at all*" [emphasis added]: *Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83 ("the Second Reading") at col 2436. Similar sentiments were raised by other members during the same reading, including the observation that "increasing maximum fine ceilings also allow[s] judges the important sentencing discretion of *imposing higher fines rather than imprisonment*" [emphasis added]: the Second Reading at col 2371 (Mdm Ho Geok Choo). With the raising of the ceiling for the fine, the courts now have a greater discretion to impose a higher fine in lieu of a short custodial term in an appropriate case. It thus stands to reason that the courts no longer have to necessarily rely on imposing custodial sentences in order to deter future road rage offences, and may exercise their discretion to impose high fines where appropriate.

47 Our courts have always preached caution in the imposition of custodial sentences as default sentences. In this regard, Chan CJ previously held in *Yang Suan Piau Steven v Public Prosecutor* [2013] 1 SLR 809 that "a custodial sentence should not be lightly or readily imposed as a norm or a default punishment unless the nature of the offence justifies its imposition retributively or as a general or specific deterrent, where deterrence is called for" (at [31]), and that "where a particular kind or level of punishment can have the same deterrent effect as a more severe kind or level of punishment, it would be disproportionate to impose the latter instead of the former" (at [33]). This makes eminent sense, given that our courts have also always advocated the tempering of deterrence with proportionality in relation to the severity of the offence and the moral and legal culpability of the offender: *Law Aik Meng* ([27] *supra*) at [30], quoting *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [31]. In *Public Prosecutor v Cheong Hock Lai and other appeals* [2004] 3 SLR(R) 203, Yong CJ emphasised that a fine may be sufficient as a deterrent sentence if "it is high enough to have a deterrent effect" (at [42]). This principle has since been affirmed repeatedly: see *Tan Gek Young v Public Prosecutor and another matter* [2017] SGHC 203 at [68] and *Public Prosecutor v Lim Choon Teck* [2015] 5 SLR 1395 at [26]. Accordingly, while I agree that incidents involving road rage violence do indeed call for general deterrence, I take the view that considerations of proportionality militate against the imposition of a custodial term in *all* cases of road rage violence, regardless of the facts and circumstances of the case; depending on the particular facts and circumstances of a road rage offence, a high fine could well be sufficient to function as a deterrent sentence.

48 For the above reasons, I would respectfully decline to adopt the approach, as was apparently laid down in *Ong Hwee Leong* ([2] *supra*) and *Lee Seck Hing* ([2] *supra*), that a mandatory custodial term should be imposed for

all road rage cases. I now turn to apply the sentencing approach as set out above to the facts of the present appeal.

Application to the facts

49 In my judgment, the Prosecution's appeal against the sentence for the first charge should be dismissed, albeit for reasons different from those provided by the District Judge. However, I allow the Prosecution's appeal against the sentence for the second charge, albeit also for reasons different from those provided by the Prosecution. In the circumstances, the sentence imposed for the first charge remains a fine of S$4,000, but the original sentence imposed for the second charge of a fine of S$5,000 is substituted with a three-week imprisonment term.

The first charge

50 For the first charge, I do not think that the sentence of a fine of S$4,000 is manifestly inadequate, and reject the Prosecution's submission that it should be changed to a custodial sentence.

51 In the first place, I do not agree with the Prosecution's characterisation of the first incident as one involving road rage violence on the part of Lim. In my view, Lim failed to rein in his anger and assaulted Basil *only because Basil had hit the top of Lim's car*. Based on the evidence adduced at trial, it is clear to me that Lim's "rage" that sparked off his physical assault on Basil had nothing to do the traffic incident on the zebra crossing or any dispute over the traffic incident, but was merely in retaliation to what Basil had done to his car.

52 On the other hand, Basil must have felt slighted by Lim's manner of driving, in particular by Lim's failure to give way to him at the zebra crossing.

He vented his anger by hitting the top of Lim's car with light to moderate force. Viewed from this perspective, Basil should in fact be regarded as the one who had committed an act of road rage by hitting the top of Lim's car because he was technically the one who had escalated a minor traffic transgression into a physical act inflicted against the property of another road user. In other words, Basil was the road rage aggressor, not Lim.

53 To a large extent, Lim's act of punching Basil was provoked by Basil's act of road rage. Indeed, if Basil had dented the roof of Lim's car, it would even amount to an act of mischief committed as a result of Basil's road rage. If Basil had, for example, scratched Lim's car or kicked and severely dented the door of Lim's car, it would have been a much graver form of road rage on the part of Basil. Basil could well have been charged for his actions and the deterrent sentencing policy against road rage, albeit manifested in this instance in the form of acts causing property damage, would then be applicable as part of the sentencing considerations.

54 For the reasons I have given, it would not be fair in my view to treat Lim as having caused hurt to Basil due to Lim's road rage, and have the deterrent sentencing policy against road rage violence applied against him. For the purpose of sentencing, I have instead considered the presence of provocation by Basil, which was relatively minor in nature. However, I must stress that this would not excuse Lim's disproportionate retaliation for what Basil had done by punching Basil on the right side of his face, which constitutes the first charge.

55 Having clarified that the first incident is not an incident of road rage violence, it thus leaves me to consider the usual harm- and culpability-based factors in order to determine the appropriate sentence for this charge. I first find that there was a low level of harm caused for the following reasons:

(a) Basil only suffered from light injuries in the form of an abrasion to his left eye brow.

(b) While it is true that Basil's spectacles, which flew off as a result of Lim's punch, were badly bent, this property damage was not significant.

(c) The initial traffic incident took place on a slip road, and the subsequent assault took place far from the road. Hence, little inconvenience arising from Lim stopping his car at the road shoulder was likely caused to surrounding road users.

56 I also find that Lim's culpability was not high for the following reasons:

(a) There was provocation from Basil. In reaction to Lim's failure to give way at the zebra crossing, Basil hit Lim's car with his open palm, which caused its occupants to perceive a loud thud. Thus, while Basil was ultimately the victim in the first incident, he was technically the road rage aggressor who had provoked Lim into attacking him.

(b) Although it is true that by swinging his left fist at Basil's face, Lim was striking a vulnerable part of Basil's body, Lim ultimately only swung a single punch at Basil and did stop after he knocked off Basil's spectacles.

57 Finally, in respect of the non-offence specific aggravating or mitigating factors, I consider the fact that Lim was a first-time offender to be effectively cancelled out by the fact that he had claimed trial and did not plead guilty at the first instance to show his remorse.

58 Taking all the relevant considerations into account, I do not find that the fine of S$4,000 is at all manifestly inadequate. Accordingly, I dismiss the Prosecution's appeal against sentence for the first charge.

The second charge

59 As for the second charge, I set aside the District Judge's fine of S$5,000 and replace it with a sentence of three weeks' imprisonment.

60 Again, I reject the Prosecution's submission that the second incident is an incident involving road rage violence. In my view, the second incident is one that does not stem from any dispute or argument arising in the course of common road use. Although the second incident did take place very shortly after the first incident, I agree with the District Judge's finding that the second incident is clearly a separate transaction from the first incident because the second incident occurred after the parties had already fully disengaged following the first incident. Indeed, the evidence showed that Basil had the time and opportunity to retrieve his spectacles with the aid of an elderly passer-by, take out his notebook and walk 30m back to the zebra crossing before being confronted by Lim again. Also, the genesis of the second incident clearly had nothing to do with the initial traffic-related incident. Rather, it arose only because Lim learnt that Basil wanted to take down his car plate number for the purposes of making a police report against Lim for punching him, and Lim was attempting to interfere with Basil's making of the police report by intimidating and physically assaulting him. This is therefore not an incident of violence to which the road rage deterrent sentencing policy should apply.

61 Having said that, I am still of the view that a three-week imprisonment term should be imposed. I once again turn first to consider the harm- and

culpability-based factors in relation to the second charge. In my view, the culpability of Lim in the second incident is high for the following reasons:

(a) Lim was the aggressor and was clearly unprovoked. Whereas Basil was merely attempting to record Lim's car plate number and leave immediately, Lim first blocked Basil and shouted expletives at him to prevent him from leaving. Lim then continued to act in a thuggish manner, grabbing Basil's neck chain, breaking it and causing Basil to suffer from scratches, and finally punching Basil.

(b) Lim struck a vulnerable part of Basil's body by punching the back of Basil's neck.

(c) Lim attacked Basil when he was in a defenceless and vulnerable position by punching Basil when Basil was bending down to pick up his chain which had fallen to the ground. Basil was thus unable to take any evasive action, and was fortunate to escape more severe injuries.

(d) Lim attacked Basil on this second occasion even though he knew that Basil was already suffering cuts and Basil's spectacles were badly damaged from the first incident. Basil never retaliated when Lim attacked him.

(e) Finally, the second incident only arose because Lim was attempting to interfere with Basil's making of a police report against him. Counsel for Lim, by way of his letter dated 10 July 2017, argued that Lim did not interfere with Basil's making of a police report because (i) Lim did not prevent Basil from copying down his car plate number,[27]

[27] Letter from Oon & Bazul LLP dated 10 July 2017, para 4(b)(i).

(ii) Lim did not seize the notepad on which Basil had written the car plate number,[28] and (iii) Lim had in fact told Basil to go ahead with the police report using the particulars he had taken down.[29] I disagree with his submissions. In my view, while I would not go as far as to make a finding, as the District Judge did (at [152] of the GD), that "the impetus for the second assault [was] to prevent [Basil] from getting hold of particulars that could be used to identify [Lim]", the evidence clearly showed that Lim attempted to interfere with Basil's making of a police report against him. When Lim saw the victim recording down his car plate number, he prevented Basil from leaving the scene by blocking his path after he had taken down the car plate number. It was also clear to me that contrary to counsel's suggestion that Lim was encouraging Basil to carry on with making the report, Lim had in fact intimidated and attacked Basil because Basil was going to make a police report against Lim.[30]

62 On the other hand, I recognise that the degree of harm caused in this incident was low because Basil ultimately suffered from very minor injuries. Specifically, Basil suffered from only soreness at the back of his neck as a result of the punch by Lim. While Basil also suffered from abrasions on his neck, they probably came about when Lim had grabbed at his chain, causing it to break and cut his neck. The abrasions were in any event not serious injuries.

63 As for the non-offence-specific factors that apply, I give little weight to the fact that Lim was a first-time offender because I consider the mitigating

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28 Letter from Oon & Bazul LLP dated 10 July 2017, para 4(b)(ii).

29 Letter from Oon & Bazul LLP dated 10 July 2017, para 4(c).

30 ROP vol 1, p 108.

weight that I would otherwise have accorded to his lack of antecedents to be effectively cancelled out by Lim's lack of remorse. Lim had claimed trial and had denied assaulting Basil altogether.

64 Therefore, although the District Judge had rightly taken into consideration most of the aggravating and mitigating factors identified above, I find that the District Judge erred in failing to take into account the aggravating factor that Lim had attempted to interfere in Basil's making of a police report by preventing Basil from leaving the scene and intimidating him. This is a significant aggravating factor because such actions of accused persons impede the functioning of the police by obstructing the commencement of investigation processes. Given that "offences against or relating to public institutions, such as the courts, the police, and the civil service" have been expressly recognised in *Law Aik Meng* ([27] *supra*) (at [24(a)]) to be a type of offence that calls for general deterrence, it must surely follow that the obstruction of and attacks on persons intending to make police reports for offences committed (so that the police investigation processes can begin) ought to be considered a significant aggravating factor in sentencing.

65 In the circumstances, I allow the Prosecution's appeal and impose a short custodial sentence of three weeks' imprisonment in respect of the second charge.

Remaining sentencing considerations

66 I now turn to address two remaining mitigating factors raised by Lim and relied upon by the District Judge in sentencing Lim below.

67 First, in the trial below, Lim submitted, as part of his mitigation plea, a character reference and a testimonial, both of which were written by his

superiors in the SAF and essentially explain Lim's contribution and service rendered to the SAF.[31] The District Judge, in coming to his decision on the appropriate sentence to be imposed, appeared to place significant weight on the two testimonials submitted by Lim by characterising the testimonials as showing that Lim had "provided an exemplary service to the SAF": see the GD at [144].

68 I agree with the Prosecution's submissions that little mitigating weight, if any, should be attributed to these testimonials. In the recent decision of *Stansilas Fabian Kester* ([27] *supra*), Sundaresh Menon CJ expounded at length on the principles underlying the mitigating value of public service and contributions (at [80]–[101]). These principles have been usefully summarised by Menon CJ in the following manner (at [102]):

> (a) Any evidence concerning the offender's public service and contributions must be targeted at showing that *specific sentencing objectives will be satisfied* were a lighter sentence to be imposed on the offender;
>
> (b) The fact that an offender has made past contributions to society might be a relevant mitigating factor not because it somehow reduces his culpability in relation to the present offence committed, but because it is indicative of his capacity to reform and it tempers the concern over the specific deterrence of the offender;
>
> (c) This, however, would carry modest weight and can be displaced where other sentencing objectives assume greater importance; and
>
> (d) Any offender who urges the court that his past record bears well on his potential for rehabilitation will have to demonstrate the connection between his record and his capacity and willingness for reform, if this is to have any bearing.
>
> [emphasis in original]

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31 ROP vol 2, pp 375–376.

In the present appeal, Lim's testimonials primarily relate to his work with the SAF. They do not show how his contributions to the SAF might somehow be indicative of his capacity to reform. In any event, I take the view that the need to deter offenders like Lim from future offences of violence with broadly similar aggravating circumstances must clearly assume greater importance than any hint of Lim's capacity and willingness for reform that might somehow be gleaned from his testimonials.

69 Second, Lim submitted that he ought to be sentenced to a lighter sentence because: (a) the police investigations in connection with this case have already caused him to suffer financially in terms of lost increments and bonuses (allegedly amounting to about S$74,735), as well as in terms of lost opportunities for promotion in the meantime; (b) his conviction has resulted in the SAF commencing military administrative action against him, which could result in a discharge or a warning, or alternatively a bar from any promotion for a period of two years as well as a loss of other financial increments; (c) a custodial sentence would increase the likelihood of a discharge, which might cause him to lose his accrued retirement benefits, which presently stand at about S$108,000.[32] The District Judge was clearly heavily influenced by this submission, observing that a custodial sentence "would apparently have sounded a death knell to [Lim's] career in the SAF, and lead to his losing over $100,000 in retirement funds", and that "such additional 'penalties' were 'by any standard … too expensive a price to pay for what was a moment of sheer folly when [Lim] lost control of his temper": the GD at [143]–[144].

70 Once again, I agree with the Prosecution's submission that all of Lim's submissions in this regard have no merit. In support of this conclusion, it is once

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[32] Lim Yee Hua's Written Submissions, para 50.

again apt to refer to the decision of Sundaresh Menon CJ in *Stansilas Fabian Kester* ([27] *supra*). In that case, the appellant, who pleaded guilty to a charge under the Road Traffic Act (Cap 276, 2004 Rev Ed) for drunk driving, made highly similar arguments in mitigation, submitting that he should receive a lighter sentence because (a) he would be facing impending disciplinary proceedings and (b) he had already been punished financially through the withholding of performance bonuses and merit increments. Menon CJ first rejected the argument that an offender who has had certain sanctions imposed on him by his employer deserves a lesser degree of punishment from the court, holding as follows (at [109]):

> An employer may have any number of reasons for deciding to impose penalties on the offender, such as the detriment that the offender's conduct has had on the employer's reputation, or a decision by the employer that the offender has by his conduct demonstrated that he is not suited for a particular position or appointment. These decisions are based on organisational goals and values, and are often difficult for a court to divine or assess. More importantly, these reasons have little to do with the rationale for punishment under the criminal law – which is the preservation of morality, protection of persons, the preservation of public peace and order and the need to safeguard the state's institutions and wider interests: *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [17].

Menon CJ also rejected the argument that an offender should not receive punishment of a certain type or above a certain degree because he will lose his job or face disciplinary proceedings otherwise, stating thus (at [110]):

> The argument is that the imposition of a certain type or degree of punishment will lead to hardship or compromise the offender's future in some way and that this additional hardship may and indeed should be taken into account by the sentencing court. However, this will not often bring the offender very far. Prof [Andrew] Ashworth accounts for the general lack of persuasiveness of such arguments in the following lucid fashion (*Sentencing and Criminal Justice* [(Cambridge University Press, 6th Ed, 2015)] at p194):

> Is there any merit in this source of mitigation [*ie,* the effect of the crime on the offender's career]? Once courts begin to adjust sentences for collateral consequences, is this not a step towards the idea of wider social accounting which was rejected above? In many cases one can argue that these collateral consequences are a concomitant of the professional responsibility which the offender undertook, and therefore that they should not lead to a reduction in sentence because the offender surely knew the implications. Moreover, there is a discrimination argument here too. If collateral consequences were accepted as a regular mitigating factor, this would operate in favour of members of the professional classes and against 'common thieves' who would either be unemployed or working in jobs where a criminal record is no barrier. It would surely be wrong to support a principle which institutionalized discrimination between employed and unemployed offenders.

71 I fully agree with the reasons expressed by Menon CJ in *Stansilas Fabian Kester* ([27] *supra*) and supplement them with some observations of my own. In respect of disciplinary actions that *have been* taken by the SAF, I take the view that how the SAF intends to discipline its soldiers ought to remain solely the SAF's own prerogative. It is not the business of the courts to indirectly alleviate the consequences and severity of any disciplinary action meted out by the SAF by imposing a more lenient court sentence to offset the effects of that disciplinary action on the soldier. Separately, in respect of disciplinary actions that *might be* taken by the SAF in cases where the disciplinary proceedings would be held only after the court proceedings, it would be unprincipled for the courts to pre-empt how the SAF might discipline its soldiers and attempt to influence that by imposing a more lenient court sentence just because the court takes the view that the soldier might be disciplined too severely by the SAF.

72 I thus hold that Lim's arguments *vis-à-vis* both the setbacks to his career advancement that he has already endured and the nature of the disciplinary

action that might be taken against him by the SAF ought not to have any bearing on my determination of the appropriate sentence to impose in the present appeal.

Conclusion

73 For all of the reasons stated above, I allow the Prosecution's appeal against sentence, but only in part. In so doing, I dismiss the appeal against the District Judge's decision to impose a fine of S$4,000 (in default four weeks' imprisonment) for the first incident, but allow the appeal against the sentence imposed for the second incident and replace the fine of S$5,000 (in default five weeks' imprisonment) with a sentence of three weeks' imprisonment. The fine of S$5,000 paid by Lim in respect of the second incident is ordered to be refunded to him.

Chan Seng Onn
Judge

Mohamed Faizal and Dora Tay (Attorney-General's Chambers) for the Public Prosecutor;
Chentil Kumar Kumarasingam (Oon & Bazul LLP) for Lim Yee Hua.