IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 161

Criminal Case No 32 of 2014

Between

Public Prosecutor

And

(1) Hamidah Binte Awang
(2) Ilechukwu Uchechukwu Chukwudi

JUDGMENT

[Criminal procedure and sentencing] — [Fresh evidence]
[Criminal procedure and sentencing] — [Statements]
[Evidence] — [Expert Evidence]

TABLE OF CONTENTS

Public Prosecutor
v
Hamidah Binte Awang and another

[2019] SGHC 161

High Court — Criminal Motion No 4 of 2017 and No 22 of 2018
Lee Seiu Kin J
31 July, 2, 3, 7, 8 August 2018, 4 April, 5 July 2019

Lee Seiu Kin J: Judgment reserved.

Introduction

1 Ilechukwu Uchechukwu Chukwudi ("Ilechukwu"), a Nigerian national, faced a charge of drug trafficking under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). He was tried jointly with Hamidah Binte Awang ("Hamidah") who was charged with attempting to export drugs under s 7 read with s 12 of the MDA.[1]

2 On 5 November 2014, I acquitted Ilechukwu of the charge against him and convicted Hamidah of the charge against her.[2] Hamidah appealed against her sentence by way of Criminal Appeal No 33 of 2015, which was dismissed

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1 Record of Proceedings for CCA 10/2014 ("RP"), Volume 2, pp 1–2.

2 NE dated 5 November 2014 at p p116.

by the Court of Appeal on 13 September 2016.[3] The current proceedings relate only to Ilechukwu.

Procedural history

The charge

3 On 13 November 2011, Ilechukwu flew from Lagos, Nigeria to Singapore. At the Murtala Muhammed International Airport in Lagos, Nigeria, he checked in a black luggage bag ("the Black Luggage") prior to his flight, which he retrieved from the luggage belt when he arrived at Changi Airport on the same day. Later that night, Ilechukwu met Hamidah and handed the Black Luggage to her. Hamidah placed the Black Luggage in her car. She subsequently drove to Woodlands Checkpoint, where her car was searched. The Black Luggage was retrieved from the car, cut open at the sides and drugs were discovered therein.

4 Ilechukwu was charged with trafficking not less than 1,963.3g of methamphetamine under s 5(1)(*a*) of the MDA.[4]

The acquittal by the High Court

5 Ilechukwu claimed trial. At the end of the trial, on 5 November 2014, I acquitted Ilechukwu of the charge against him. My written grounds of decision is reported in *Public Prosecutor v Hamidah Binte Awang and another* [2015] SGHC 4 ("*HC (Acquittal)*").

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3 Minute sheet dated 13 September 2016.

4 Record of Proceedings for CCA 10/2014 ("RP"), Volume 2, p 2.

6 In acquitting Ilechukwu, I accepted his defence that he had come to Singapore on business and that he did not know that the Black Luggage contained drugs. I found that Ilechukwu had rebutted the presumption of knowledge of the nature of the drugs under s 18(2) of the MDA and stated at [70] of *HC (Acquittal)*:

> On the evidence that I have before me, I found that Ilechukwu had rebutted the presumption of knowledge under s 18(2) of the MDA. The drugs were so well hidden that he could not have known about it unless he was told of it. His behaviour throughout, except at the time of arrest, had been consistent with a person who had no inkling of the presence of drugs in the Black Luggage. His explanation for his lies at the time of arrest was not unreasonable given the situation he found himself, including the fact that he was in a foreign land for the first time and unfamiliar with its laws and customs.

The CA conviction decision

7 The Prosecution appealed against the acquittal of Ilechukwu by way of Criminal Appeal No 10 of 2014 ("CCA 10/2014"). On 29 June 2015, the Court of Appeal allowed the appeal and convicted Ilechukwu of the charge brought against him. The Court of Appeal's grounds of decision is reported in *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 ("*CA (Conviction)*").

8 The primary reason for the Court of Appeal's decision to convict Ilechukwu was the lies and omissions he made in his statements to the Central Narcotics Bureau ("CNB"). The Court of Appeal found that there was no innocent explanation for those lies. The Court of Appeal stated at [61] and [88] of *CA (Conviction)*:

> 61 [Ilechukwu's] excuses for the lies were wholly unsatisfactory and unbelievable. It is clear to us that he had deliberately lied to distance himself from the drugs in the Black Luggage, the existence of which he knew. Quite simply, there is no acceptable explanation for the lies save for his realisation of

> his guilt. To suggest that [Ilechukwu] was justified to lie as a defensive move would be to turn reason and logic on its head.
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> …
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> 88 What tipped the scales are the numerous lies and omissions made by [Ilechukwu] in his statements, for which there is no innocent explanation. … The lies were told by [Ilechukwu] obviously to distance himself from the Black Luggage and the Drugs concealed therein.

CA/CM 4/2017 – the first criminal motion

9 The Court of Appeal ordered that the matter be remitted to me for sentencing. For the purposes of sentencing, both the Prosecution and Defence called for psychiatric reports on Ilechukwu on the issue of whether he should be sentenced to life imprisonment instead of the death penalty under s 33B(3)(*b*) of the MDA.

10 The Prosecution requested Dr Jaydip Sarkar ("Dr Sarkar"), then of the Institute of Mental Health ("IMH"), to provide a report on Ilechukwu. In his report, dated 6 March 2017, ("First Sarkar Report"), Dr Sarkar diagnosed Ilechukwu with post-traumatic stress disorder ("PTSD") which arose as a result of a childhood trauma. Dr Sarkar opined that it was likely that PTSD prompted Ilechukwu to utter falsehoods in his statements to the CNB to save his life. Dr Sarkar opined at para 88 that:[5]

> [Ilechukwu] was suffering from a recognized mental disorder (PTSD with dissociative symptoms) at the time that his statements were taken by investigating officers. In my opinion presence of this disorder is likely to have led to an overestimation of [the] threat to his life which could have prompted him to utter unsophisticated and blatant falsehoods in order to save his life as outlined in paragraph 48.

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5 2nd Accused's Bundle of Medical Reports and References dated 30 July 2018 at Tab A.

11 Relying on the First Sarkar Report as fresh evidence of his innocence, Ilechukwu filed Criminal Motion No 4 of 2017 ("CA/CM 4/2017") on 5 April 2017 requesting the Court of Appeal to rehear Criminal Appeal No 10 of 2014, *ie*, the Prosecution's appeal against the acquittal of Ilechukwu.

12 On 2 August 2017, the Court of Appeal allowed CA/CM 4/2017 in part. The CA's judgment for CA/CM 4/2017 is reported at *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2017] 2 SLR 741 ("*CA (Criminal Motion 1)*"). The Court of Appeal found that the First Sarkar Report was *prima facie* powerfully probative in respect of the issue of the reasons Ilechukwu lied in his statements to the CNB ("the False Statements Issue"). This was because Dr Sarkar's opinion may explain why Ilechukwu continued to lie in the statements which he made to the CNB. The False Statements Issue was in turn the essential question in CCA 10/2014 (see [43] of *CA (Criminal Motion 1)*).

13 The Court of Appeal then remitted the matter to me to receive evidence from Dr Sarkar in relation to the First Sarkar Report as well as such other evidence on matters arising from the report. Specifically, the Court of Appeal directed at [50]–[51] of *CA (Criminal Motion 1)*:

> 50 We therefore allow the Present Motion in part and order a review of this court's decision in CA (Conviction) ([7] *supra*) because of the unique turn of events in this case, which make it a "truly exceptional" case of the kind envisaged by this court in *Kho Jabing* ([1] *supra*) at [65]. In so ordering, we are not making a finding that [Ilechukwu] does indeed suffer from PTSD or that he was affected by it when he made his statements to the CNB. We are likewise not implying that he is innocent. His guilt or innocence is a matter to be determined at the subsequent review of our decision in *CA (Conviction)*. As indicated at [48] above, we are of the view that the proper course of action at the present stage is to remit the matter to the Judge for him to receive evidence from Dr Sarkar in relation to [Dr Sarkar's 6 March 2017 report] as well as such other evidence on matters arising from this report as the Judge may allow either party to adduce. The Judge is then to make findings on:

> (a) whether [Ilechukwu] was suffering from PTSD;
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> (b) the typical effects of PTSD on a sufferer;
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> (c) if [Ilechukwu] was indeed suffering from PTSD:
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> (i) the period of time during which PTSD affected him;
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> (ii) the effects of PTSD on him during that period; and
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> (iii) the extent to which PTSD affected him when he gave his statements to the CNB.
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> 51 After the Judge has made his findings on the issues stated above, there shall be a further hearing where this court will review its decision in *CA (Conviction)*. At that hearing, the parties are to address us on the correctness of the Judge's findings on the aforesaid issues and their implications on our decision in *CA (Conviction)*.

CA/CM 22/2018 – the second criminal motion

14 The further hearing to receive fresh evidence as directed by the Court of Appeal was conducted on 31 July 2018, 2–3 August 2018 and 7–8 August 2018.

15 At the conclusion of the further hearing, on 8 August 2018, counsel for Ilechukwu indicated to the court that he would be filing another criminal motion before the Court of Appeal on behalf of Ilechukwu.[6] Hence, on 11 September 2018, Ilechukwu filed Criminal Motion 22 of 2018 ("CA/CM 22/2018") in which he requested the Court of Appeal to revise the terms of the orders it had made in CA/CM 4/2017.[7]

16 CA/CM 22/2018 was heard on 23 January 2019 and allowed in part. The Court of Appeal added a further para (d) to the order it made in *CA (Criminal*

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6 NE dated 8 August 2018 p 178, lines 8–11.

7 Affidavit of Eugene Thuraisingam dated 1 September 2018 at para 5.

Motion 1). The eventual order for determination by the High Court is as follows (with the addition italicised) ("Terms of Reference"):

(a) whether [Ilechukwu] was suffering from PTSD;

(b) the typical effects of PTSD on a sufferer;

(c) if [Ilechukwu] was indeed suffering from PTSD:
  (i) the period of time during which PTSD affected him;
  (ii) the effects of PTSD on him during that period; and
  (iii) the extent to which PTSD affected him when he gave his statements to the CNB.

(d) if Ilechukwu was not suffering from PTSD, whether Ilechukwu was suffering from post-traumatic stress symptoms ("PTSS"). If he was suffering from PTSS:
  (i) the precise symptoms should be identified;
  (ii) the period of time during which PTSS affected him;
  (iii) the effects of PTSS on him during that period; and
  (iv) the extent to which PTSS affected him when he gave his statement[s] to the CNB

The hearing

17 The evidence was heard on 31 July, 2, 3, 7, 8 August 2018. There were a total of nine witnesses for the Prosecution, of which eight were witnesses of fact. Two of them were interpreters who interpreted the statements that Ilechukwu gave to the CNB at the material time. Five of them were from the team of CNB officers who carried out the arrest and escorted Ilechukwu to various places. The last witness of fact was one Adili Chibuike Ejike ("Adili"). He had flown into Singapore on the same flight as Ilechukwu and was also arrested for trafficking, but in a separate operation. The Prosecution called one expert witness, psychiatrist Dr Christopher Cheok ("Dr Cheok").

18 The Defence applied for the admission of sworn statements from two witnesses, Nzube Ilechukwu ("Nzube") and Emeka Ikechukwu Ilechukwu

("Emeke") under s 32(1)(j)(iii) of the Evidence Act (Cap 97, 1997 Rev Ed). They were both brothers of Ilechukwu who were called to give evidence of his childhood. Nzube lives in California, USA, having gone there in 2016. He stated in his affidavit that he was juggling between school and minimum wage jobs and could not afford to travel to Singapore to give evidence. Emeke lives in his home village in Nigeria and also could not afford to travel to Singapore to give evidence. Based on the evidence of Ilechukwu's background, and the assertions made by Nzube and Emeke in their statements, I was satisfied that they were outside Singapore and that it was not practicable to secure their attendance in court to give evidence. As the evidence that they proposed to give were relevant to the inquiry before me, I admitted their sworn statements, which were notarised in California and Nigeria respectively. Ilechukwu called three psychiatrists to give evidence as experts: (a) Dr Munidasa Winslow ("Dr Winslow"), (b) Dr Ken Ung ("Dr Ung") and (c) Dr Sarkar. Together with the Prosecution's psychiatrist, Dr Cheok, the four experts gave their evidence in conclave on 7 and 8 August 2018.

19 I set out in this judgment my findings on the matters remitted to me by the Court of Appeal in CA/CM 4/2017 and CA/CM 22/2018.

The Wukari massacre

20 The case for Ilechukwu turns on an incident that he claimed occurred when he was five to six years old. It is accepted by both sides that the incident known as the Wukari massacre took place in 1990 at Wukari, Nigeria.

21 According to Ilechukwu, the event took place when he had yet to start school.[8] He claimed that, as he was playing with his younger brother, he saw some people running with choppers and cutlasses. They were chasing after another group of persons to "cut them".[9] The attackers were of the Hausa tribe. Those fleeing were of the Igbo tribe, which was the tribe that Ilechukwu belonged to.

22 The young Ilechukwu attempted to flee from the attackers, together with his mother and brother, to a place along the river.[10] The police came a while later, and began "shooting guns and throwing tear gas". Ilechukwu claimed to have seen this.[11] Ilechukwu also claimed to have seen a dead body in front of his mother's shop, with "blood everywhere".[12]

23 After the killings, Ilechukwu and his family fled from Wukari. Ilechukwu said that the night of the killings was the last time his family was in the Wukari area.[13]

24 The two statements from Ilechukwu's brothers, Nzube and Emeka,[14] that were admitted in evidence, corroborated Ilechukwu's version of events. Emeka, like Ilechukwu, claimed to have witnessed the Wukari massacre first hand. According to Emeka, in or around 1990, members of the Hausa tribe attacked

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[8] NE Day 2, 54:20.

[9] NE Day 2, 55:6.

[10] NE Day 2, 55:11.

[11] NE Day 2. 55:14 – 55:20.

[12] NE Day 2, 56:2.

[13] NE Day 2, 56: 4 – 56:5.

[14] Defence Exhibits D10 and D9.

and killed members of the Igbo tribe in Wukari.[15] As Emeka was returning from school, he saw smoke coming from buildings and "many people running around with weapons".[16] There were people and children crying and running everywhere. People were lying on the road covered with blood.[17] Emeka then hid with members of the Yoruba tribe. Members of the Yoruba later brought Emeka to his mother and his brother, Ilechukwu.[18] The three of them went to their mother's shop, where they saw a lot of blood and the shop destroyed.[19] Emeka, like Ilechukwu, said that the family fled Wukari immediately after the killings.[20]

25 Ilechukwu's other brother, Nzube, did not personally witness the Wukari massacre.[21] However, he said that the trading store operated by his parents was destroyed, and that his family moved from Wukari after the Wukari massacre.[22]

26 The Prosecution did not adduce evidence to dispute the accounts of Ilechukwu and his brothers about the Wukari massacre. I am satisfied that, given the consistent evidence of Ilechukwu and his brothers, he did live through that event.

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[15] Defence Exhibit D10, para 3.

[16] Defence's Exhibit, D10, para 4.

[17] Defence's Exhibit, D10, para 4.

[18] Defence's Exhibit, D10, para 6.

[19] Defence's Exhibit, D10, para 8.

[20] Defence's Exhibit, D10, para 9.

[21] Defence's Exhibit, D9, para 8.

[22] Defence's Exhibit, D9, para 12.

The Parties' Cases

The Defence's Case

27 The Defence's case was that:[23]

(a) Ilechukwu suffered from Post-Traumatic Stress Disorder ("PTSD") as a result of the Wukari massacre in 1990.

(b) Ilechukwu's PTSD was triggered upon his arrest on 14 November 2011.

(c) The triggering of his PTSD caused Ilechukwu to overestimate the threat to his life, which in turn caused him to lie in his statements.

28 In the alternative, the Defence submitted that even if a formal diagnosis of PTSD was not made out, Ilechukwu was traumatised by the Wukari massacre and had since suffered PTSS. The Defence further submitted that PTSS were triggered upon his arrest. It claimed that the PTSS caused Ilechukwu to "overestimate the threat to his life" when he provided statements to the CNB, causing him to lie.[24]

29 It is also helpful to briefly set out the broad positions adopted by the three Defence experts in the Remitted Hearing and in their written reports:

(a) Dr Sarkar assessed Ilechukwu to be suffering from PTSD using the Post-Traumatic Stress Inventory (PSS-I) diagnostic. He said that Ilechukwu "met criteria for a life-time diagnosis of post-traumatic stress

[23] Defence's Submissions for the 2nd Accused, para 5.

[24] Defence's Submissions for the 2nd Accused, para 6.

[dis]order although he does not have symptoms of the full disorder currently".[25] In his written report, Dr Sarkar also stated that Ilechukwu's PTSD was triggered again after his arrest when he became aware of the death sentence.[26]

(b) Dr Ung assessed Ilechukwu to be suffering from PTSD using the CAPS-5 diagnostic. According to him, Ilechukwu's PTSD had resolved itself to "sub-threshold levels" and he was not suffering from active PTSD at the time of his commission of the offence.[27] Dr Ung also said that Ilechukwu being told that he may face the death penalty resulted in a recurrence of PTSD.[28]

(c) Dr Winslow assessed Ilechukwu to be suffering from lifelong PTSD, and that his PTSD symptoms were "triggered and worsened" when he was told he would be facing the death penalty when he was arrested.[29] Dr Winslow added that at the time of the clinical interview, Ilechukwu was suffering from "significant PTSD symptomology".[30]

The Prosecution's Case

30 All the experts agreed that if Ilechukwu did suffer from PTSD in his childhood, this would mean that the threshold for assessing Criterion A (an immediate threat to life) of the DSM-5 PTSD criteria (defined at [42] below)

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[25] Annex A, Reports of the Defence's Expert Witnesses, p 10, para 64.

[26] Annex A, Reports of the Defence's Expert Witnesses, p 12, para 73.

[27] Annex C, Reports of the Defence's Expert Witnesses, p 5, para 16.

[28] Annex C, Reports of the Defence's Expert Witnesses, p 10, para 23.

[29] Dr Winslow's Medical Report dated 28 December 2017.

[30] Dr Winslow's Medical Report dated 28 December 2017.

would be lowered. Conversely, if Ilechukwu did *not* suffer from PTSD in his childhood, the usual high threshold for assessment of Criterion A would apply. The Prosecution submitted that Ilechukwu did not suffer from PTSD as a result of witnessing the Wukari massacre.[31]

31 The Prosecution further argued that there was no fresh onset of PTSD in 2011 when Ilechukwu was arrested. Their reason for this was that neither Ilechukwu's arrest nor the service of the charge on him satisfied Criterion A.[32]

32 In relation to PTSS, the Prosecution disputed that PTSS symptoms were at any time present in Ilechukwu. They also said that the arrest did not constitute a trigger for PTSS.[33]

Issues to be determined

33 The issues to be determined are as follows:

(a) Whether Ilechukwu was suffering from PTSD before his arrest in 2011 as a result of the Wukari massacre.

(b) Whether Ilechukwu suffered a fresh episode of PTSD in 2011 after his arrest.

(c) In the alternative, even if Ilechukwu was not suffering from PTSD, whether he was suffering from PTSS.

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[31] Prosecution's Closing Submissions, para 39.

[32] Prosecution's Closing Submissions, para 40.

[33] Prosecution Reply Submissions, para 60.

34 I will first consider whether Ilechukwu was suffering from PTSD before his arrest in 2011 before determining whether he suffered from PTSD upon or after the 2011 arrest.

Issue 1: Whether Ilechukwu was suffering from PTSD before the 2011 arrest

General principles

35 Both the Prosecution and the Defence raised points of general application, in particular those in relation to:

(a) The diagnostic tools used to assess PTSD.

(b) The nature of PTSD as a mental illness, specifically whether it was a "lifelong" or "episodic".

(c) The reliability of Ilechukwu's accounts to the various experts.

(d) The Defence's approach of linking the various PTSD criteria to the expert evidence.

(e) The objectivity and reliability of the expert witnesses.

Diagnostic criteria

36 Both sides agreed that PTSD is diagnosed by reference to criteria set out in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition published by the American Psychiatric Association (the "DSM-5 PTSD Criteria"). However, the Prosecution expert, Dr Cheok, and the Defence experts used different diagnostic tools to determine whether each criteria was satisfied. Dr Cheok and Dr Ung both used the Clinical Administered PTSD Scale for

DSM-5 ("CAPS-5"), while Dr Winslow used the Detail Assessment of Post-traumatic Stress ("DAPS"). Dr Sarkar used the PSS-I diagnostic.

37 The Defence argued that there were other elements involved in a diagnosis besides the DSM-5 PTSD Criteria. In particular, they said that "clinical judgment" ought to be used.[34] The Prosecution characterised the Defence's submission to mean that "clinical judgment" replaced the DSM-5 Criteria.

38 The Defence cited the following excerpt, *inter alia*, of the DSM-5 in support of the importance of "clinical judgment" in arriving at a diagnosis:[35]

> Diagnostic criteria are offered as guidelines for making diagnoses, and their use should be informed by clinical judgment. Text descriptions, including introductory sections of each diagnostic chapter, can help support diagnosis (e.g., providing differential diagnoses; describing the criteria more fully under "Diagnostic Features").
>
> Following the assessment of diagnostic criteria, clinicians should consider the application of disorder subtypes and/or specifiers as appropriate. Severity and course specifiers should be applied to denote the individual's current presentation, but only when the full criteria are met. When full criteria are not met, clinicians should consider whether criteria for an "other specified" or "unspecified" designation…On the basis of the clinical interview, text descriptions, criteria, and clinical judgment, a final diagnosis is made.

39 I do not think that this meant that the use of "clinical judgment" should replace the DSM-5 PTSD Criteria. All that the above seemed to say was that:

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[34] Defence's Closing Submissions, para 24.

[35] Defence's BOD – DSM-5, p 21.

(a) The use of diagnostic criteria should be informed by clinical judgment, *ie*, the expert should use his or her clinical judgment in determining whether a particular diagnostic criterion was satisfied; and

(b) An unspecified diagnosis may be given to a patient, and this was a conclusion to be informed by clinical judgment.

40 Thus, all the DSM-5 PTSD Criteria must be satisfied to reach a positive diagnosis of PTSD. In assessing whether each criterion was satisfied, the expert was expected to exercise "clinical judgment" in arriving at their opinion and not by mechanically checking off each DSM-5 PTSD Criteria.

41 The PTSD diagnostic criteria applicable to children aged six years and younger (the "**DSM-5 PTSD Criteria (Childhood)**") is similar to the DSM-5 PTSD Criteria, save that it prescribes seven criteria for diagnosis instead of eight. For adults, both Criterion C and Criterion D symptoms must be satisfied. Under the DSM-5 PTSD Criteria (Childhood) for children, a person needs to manifest either symptom Criterion C or D to qualify for a PTSD diagnosis.[36]

42 A positive diagnosis of PTSD is made in adults where all of the following eight diagnostic criteria are present. It is helpful to list this out in full:[37]

[36] Defence's Closing Submissions, para 20.

[37] Exhibit P84; Defence's BOD – Tab H, DSM-5, pp 271-271.

A Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

1 Directing witnessing the traumatic event(s).

2 Witnessing, in person, the event(s) as it occurred to others.

3 Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.

4 Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (*e.g.,* first responders collecting human remains; police officers repeatedly exposed to details of child abuse).

Note: Criterion A4 does not apply to exposure through electronic media, television, movies, or pictures, unless this exposure is work related.

B Presence of one (or more) of the following intrusion symptoms associated with the traumatic event(s), beginning after the traumatic event(s) occurred:

1 Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s).

Note: In children older than 6 years, repetitive play may occur in which themes or aspects of the traumatic event(s) are expressed.

2 Recurrent distressing dreams in which the content and/or affect of the dream are related to the traumatic event(s).

Note: In children, there may be frightening dreams without recognisable content.

3 Dissociative reactions (*e.g.,* flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. (Such reactions may occur on a continuum, with the most extreme expression being a complete loss of awareness of present surroundings.)

Note: In children, trauma-specific reenactment may occur in play.

4 Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).

5 Marked physiological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).

C Persistent avoidance of stimuli associated with the traumatic event(s), beginning after the traumatic event(s) occurred, as evidenced by one or both of the following:

1 Avoidance of or efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).

2 Avoidance of or efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).

D Negative alterations in cognitions or mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidence by two (or more) of the following:

1 Inability to remember an important aspect of the traumatic event(s) (typically due to dissociative amnesia and not to other factors such as head injury, alcohol, or drugs).

2 Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (*e.g.,* "I am bad," "No one can be trusted," The world is completely dangerous," "My whole nervous system is permanently ruined").

3 Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others.

4 Persistent negative emotional state (*e.g.,* fear, horror, anger, guilt, or shame).

5 Markedly diminished interest or participation in significant activities.

6 Feelings of detachment or estrangement from others.

7 Persistent inability to experience positive emotions (*e.g.,* inability to experience happiness, satisfaction, or loving feelings).

E Marked alterations in arousal or reactivity associated with the traumatic event(s), beginning or worsening after

the traumatic event(s) occurred, as evidence by two (or more) of the following:

1 Irritable behaviour and angry outbursts (with little or no provocation) typically expressed as verbal or physical aggression towards people or objects.

2 Reckless or self-destructive behavior.

3 Hypervigilence.

4 Exaggerated startle response.

5 Problems with concentration.

6 Sleep disturbance (*e.g.,* difficulty falling or staying asleep or restless sleep).

F Duration of the disturbance (Criteria B, C, D, and E) is more than 1 month.

G The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

H The disturbance is not attributable to the physiological effects of a substance (*e.g.,* medication or alcohol) or another medical condition.

43 The DSM-5 PTSD Criteria (Childhood) is reproduced below:

A In children 6 years and younger, exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

1 Directing witnessing the traumatic event(s).

2 Witnessing, in person, the event(s) as it occurred to others, especially primary care-givers. *Note:* Witnessing does not include events that are witnessed only in electronic media, television, movies, or pictures.

3 Learning that the traumatic event(s) occurred to a parents or caregiving figure.

B Presence of one (or more) of the following intrusion symptoms associated with the traumatic event(s), beginning after the traumatic event(s) occurred:

1 Recurrent, involuntary, and intrusive memories of the traumatic event(s). *Note:* Spontaneous and intrusive memories may not necessarily appear distressing and may be expressed as play reenactment.

2 Recurrent distressing dreams in which the content and/or affect of the dream are related to the traumatic event(s). *Note:* It may not be possible to ascertain that the frightening content is related to the traumatic event.

3 Dissociative reactions (*e.g.,* flashbacks) in which the child feels or acts as if the traumatic event(s) were recurring. (Such reactions may occur on a continuum, with the most extreme expression being a complete loss of awareness of present surroundings). Such trauma specific reenactment may occur in play.

4 Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).

5 Marked physiological reactions to reminders of the traumatic event(s).

C One (or more) of the following symptoms, representing either persistent avoidance of stimuli associated with the traumatic event(s) or negative alterations in cognitions and mood associated with the traumatic event(s), must be present, beginning after the event(s) or worsening after the event(s):

Persistent Avoidance of Stimuli

1 Avoidance of or efforts to avoid activities, places, or physical reminders that arouse recollections of the traumatic event(s).

2 Avoidance of or efforts to avoid people, conversations, or interpersonal situations that arouse recollections of the traumatic event(s).

Negative Alterations in Cognitions

3 Substantially increased frequency of negative emotional states (*e.g,* fear, guilt, sadness, shame, confusion).

4 Markedly diminished interest or participation in significant activities, including constriction of play.

5 Socially withdrawn behaviour.

6 Persistent reduction in expression of positive emotions.

> **D Alterations in arousal and reactivity associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following:**
>
> 1 Irritable behaviour and angry outbursts (with little or no provocation) typically expressed as verbal or physical aggression toward people or objects (including extreme temper tantrums).
>
> 2 Hypervigilance.
>
> 3 Exaggerated startle response.
>
> 4 Problems with concentration.
>
> 5 Sleep disturbance (*e.g.,* difficulty falling or staying asleep or restless sleep).
>
> **E The duration of the disturbance is more than 1 month.**
>
> **F The disturbance causes clinically significant distress or impairment in relationships with parents, siblings, peers, or other caregivers or with school behaviour.**
>
> **G The disturbance is not attributable to the physiological effects of a substance (*e.g.*, medication or alcohol) or another medical condition.**
>
> [emphasis added]

44 As can be seen above, the symptoms of "persistent avoidance of stimuli" and "negative alterations in cognition" fall solely under Criterion C of the DSM-5 PTSD Criteria (Childhood) whereas they fall under both Criterion C and D of the DSM-5 PTSD Criteria when diagnosing adults.

Nature of PTSD

45 All four expert witnesses agreed that PTSD is an episodic and not a continuous psychiatric disorder.[38] The Prosecution construed this narrowly, stating that "a diagnosis of 'lifetime' or 'lifelong' PTSD did not mean that a

[38] NE, Day 5, 56:22 – 56:23.

person has been suffering from PTSD continuously throughout his life, but only that the person had suffered a previous episode of PTSD".[39] The Defence characterised the word "episodic" to be synonymous with a "lifetime diagnosis of PTSD".

46 The Defence experts suggested that a past diagnosis of PTSD produces a "sensitisation effect" which placed Ilechukwu at a higher risk of developing subsequent PTSD. I elaborate on this below at [115] – [120].

Reliability of Ilechukwu's accounts to the experts

47 The Prosecution submitted that the Defence expert witnesses' diagnoses of PTSD were undermined by "serious doubts about the veracity and reliability of Ilechukwu's self-reported symptoms".[40] This submission was based primarily on alleged "lies" told by Ilechukwu to Dr Sarkar during the clinical interview in his report of 6 March 2017.

48 One of the "lies" that Ilechukwu allegedly told Dr Sarkar was in respect of the "Kingsley story". The "Kingsley story" was an account by Ilechukwu of how he came to be in possession of the Black Luggage containing illicit drugs. According to Ilechukwu, the Black Luggage was passed to him by an individual known as Kingsley.

49 The Prosecution argued that the "Kingsley story" was false. At the Remitted Hearing, the Prosecution called on Adili as a witness.

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[39] Prosecution's Closing Submissions, para 49.

[40] Prosecution's Closing Submissions, para 76.

50 Adili flew into Singapore in the same flight as Ilechukwu in 2011. He was also arrested for drug trafficking in a separate operation. According to Adili, he saw Ilechukwu carrying a black luggage bag in the house of one Izuchukwu. Adili claimed that they both left Izuchukwu's house with Ilechukwu carrying the black luggage bag.[41] The Defence objected to the admission, and challenged the reliability of Adili's evidence.

51 I am unable to take into account Adili's evidence for the following reasons. Adili's evidence was adduced to challenge the veracity of Ilechukwu's version of the circumstances which preceded his arrest on 14 November 2011 in order to demonstrate that he was not telling the truth to the psychiatrists who examined him. The Prosecution argued that Adili's evidence was relevant because it determined the reliability of Ilechukwu's account to Dr Sarkar.

52 I am unable to agree with this for the following reasons. Adili's evidence would have been relevant in the original trial, which was the subject of *HC (Acquittal)*, at which the veracity of Ilechukwu's account could have been challenged in the appropriate manner. Had it been done at that trial, Adili's evidence would have to be given at the committal hearing. The Defence would then have had notice of this challenge to Ilechukwu's version of the events in Nigeria and have had the opportunity to prepare for the cross-examination of Adili. In addition, the Defence would also have had the opportunity to cross-examine other Prosecution witnesses as well as to call its own witnesses on this issue. The Prosecution did not do this at that trial. In my view, it is not proper for the Prosecution to adduce evidence from Adili on an important aspect of the Prosecution's case in the trial even though it might be relevant on a subsidiary

[41] NE, Day 1, 87:1 – 87:14.

issue of the truth of Ilechukwu's account to Dr Sarkar. In any event, without the Defence being given a full opportunity to challenge Adili's evidence, it is not possible for me to make any finding on whether Adili's evidence had affected the veracity of Ilechukwu's account to Dr Sarkar.

53 The Prosecution also suggested that Ilechukwu's alleged lies about his symptoms after the charge was read to him show that the possibility of Ilechukwu "malingering" his PTSD symptoms could not be excluded.[42] However, the Prosecution did not specify what these lies were.

54 I also do not find Ilechukwu to be "malingering" his PTSD symptoms. This was for the following reasons:

(a) All four experts agreed that Ilechukwu was below average intelligence.[43] I did not think it likely that Ilechukwu was capable of "malingering" his symptoms to sustain a positive PTSD diagnosis under the DSM-5 PTSD Criteria. In view of his background and intelligence level, I find it unlikely that he had the capability to do this.

(b) I also accept Dr Ung's view that, given Ilechukwu's background, a PTSD diagnosis was not something Ilechukwu would be familiar with.[44]

(c) I find the theory that Ilechukwu to be "malingering" his PTSD symptoms inconsistent with the overall evidence. For instance,

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[42] Prosecution's Reply Submissions, para 48(f).

[43] NE, Day 5, 56:14 – 56:17.

[44] Exhibit D5 – Dr Ung's 2nd Medical Report, para 26.

Ilechukwu had stated to Dr Ung that he had no past psychiatric history[45] and to Dr Sarkar that he had no personal or family history of mental disorder. Ilechukwu could have easily played this up if he had intended to lie about his symptoms. The fact that he had not mentioned this aspect of his past showed that he was in fact reluctant to disclose it.

(d) Indeed, Dr Sarkar was engaged by the Prosecution at the time he determined Ilechukwu to be suffering from PTSD. Dr Sarkar testified that this was the first diagnosis he had made in a prisoner facing capital punishment despite having examined over 100 prisoners during his six years as Consultant in IMH.[46] If Ilechukwu was indeed "malingering", it is my view that Dr Sarkar would have observed and noted it.

Defence's approach to diagnostic criterion

55 The Prosecution raised three objections to the Defence's approach of analysing whether the DSM-5 PTSD Criteria were met:[47]

(a) First, the Defence used symptoms that were allegedly suffered by Ilechukwu across a 21-year timeframe to make out a diagnosis of PTSD (in relation to the Wukari massacre).

(b) Secondly, the Defence correlated its experts' comments on Ilechukwu to the various DSM-5 PTSD Criteria, even when such correlation was not part of their evidence.

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[45] Exhibit D5 – Dr Ung's 1st Report, p 3, para 12 – 13.

[46] NE, Day 4, p 52 – 53.

[47] Prosecution's Reply Submissions, para 23 – 26.

(c) Thirdly, the Defence pieced together the evidence of different experts on symptoms to separately derive its own "composite" of the requisite criteria for a PTSD diagnosis.

56 As regards the first objection, I agree with the Prosecution that whatever symptoms experienced by Ilechukwu should be "attributable" or "associated" with the traumatic event.[48] Symptoms which cannot be attributed to the traumatic episode should not be used by the Defence to diagnose Ilechukwu with PTSD. Logically, the symptoms must be experienced after the traumatic event.[49] I agree that symptoms suffered because of the Wukari massacre should not be used to diagnose Ilechukwu with PTSD arising out of the 2011 arrest, and vice-versa.

57 As regards the second objection, I find that both sides, including the Prosecution, were guilty of this approach. However, this approach of matching Ilechukwu's evidence to particular criterion within the DSM-5 PTSD Criteria was largely a product of the diagnostic approach taken by Dr Sarkar and Dr Winslow.

58 Neither Dr Sarkar nor Dr Winslow used the CAPS-5 diagnostic tool. The CAPS-5 diagnostic is a criterion-by-criterion questionnaire tying Ilechukwu's responses to specific criterion under the DSM-5 PTSD Criteria. Only Dr Ung of the Defence used the CAPS-5 diagnostic. As a result, the Defence sometimes matched specific DSM-5 PTSD Criteria with statements made by Ilechukwu (either in the clinical interview or elsewhere), even when

[48] Prosecution's Closing Submissions, para 62 and para 15.

[49] Prosecution's Closing Submissions, para 15.

the expert did not expressly do so in their written medical reports or during the Remitted Hearing.

59 I did not think it appropriate to disregard the Defence experts' opinion simply because there was no statement of an express link between a particular symptom and the specific DSM-5 PTSD Criteria. My approach to this problem was to analyse whether the expert's clinical observations were sufficiently and justifiably linked to the DSM-5 PTSD Criteria even though the specific DSM-5 PTSD Criterion was not expressly stated. It was sometimes apparent from the context that the Defence experts were in fact talking about the DSM-5 PTSD Criteria even though they did not expressly say so. In any case, I do not find it fatal to the Defence's case that their experts did not always link their observations to the DSM-5 PTSD Criteria.

60 I agree with the Prosecution's third objection. The Defence was not entitled to construct its own "piecemeal" diagnosis of PTSD from the evidence of the various experts. Accordingly, I place no weight on the Defence's attempts to construct its own "piecemeal" diagnosis of PTSD from the evidence of the various experts.

Objectivity and reliability of the expert witnesses

61 I do not agree with both the Prosecution and Defence's attempts to undermine the credibility of the opposing experts. I find all the experts to be generally credible and non-partisan.

Criterion A

62 Criterion A is restated below for convenience:

> A Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

> 1 Directing witnessing the traumatic event(s).
>
> 2 Witnessing, in person, the event(s) as it occurred to others.
>
> 3 Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
>
> 4 Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (*e.g.,* first responders collecting human remains; police officers repeatedly exposed to details of child abuse).
>
> *Note:* Criterion A4 does not apply to exposure through electronic media, television, movies, or pictures, unless this exposure is work related.

63 The Prosecution did not challenge the existence of the Wukari massacre,[50] but also did not admit to Ilechukwu's version of events.[51] The Prosecution's expert nevertheless agreed that Criterion A was satisfied.

64 Accordingly, I find that Ilechukwu's exposure to the Wukari massacre satisfied Criterion A.

Criterion B

65 There is no dispute that Criterion B was satisfied as the Prosecution's expert, Dr Cheok, agreed that Criterion B symptoms were present during Ilechukwu's childhood, when he was five or six years old.[52]

Criterion C

66 Criterion C is reproduced here:

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[50] NE Day 4, 18:19 – 18:20.

[51] NE Day 4, 19:7 – 19:9.

[52] NE Day 4, 34:21 – 34:22.

> **C Persistent avoidance of stimuli associated with the traumatic event(s), beginning after the traumatic event(s) occurred, as evidenced by one or both of the following:**
>
> 1 Avoidance of or efforts to avoid distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).
>
> 2 Avoidance of or efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s).
>
> [emphasis added]

67 The Prosecution's expert, and the Defence's expert, Dr Sarkar adopted very different positions on whether Ilechukwu exhibited the symptom of "persistent avoidance" in relation to the Wukari massacre.

68 Dr Cheok's opinion was that Criterion C was not satisfied. His reason for this was his observations that Ilechukwu was able to deal with people from the Hausa tribe (people who were responsible for the Wukari massacre) when conducting business. However, Dr Cheok also recorded in his Report that Ilechukwu "avoids Wukari" because of the Wukari massacre. On the whole, Dr Cheok felt that "negative thoughts and feelings [about Wukari] were …[not] present in a [persistent] manner" such that Criterion C was satisfied. [53] Accordingly, Dr Cheok rated Criterion C1 and C2 as "mild/subthreshold" and "absent" respectively.

69 At the Remitted Hearing, the Prosecution also suggested that evidence of Ilechukwu's failure to "avoid his mother who … would talk repeatedly about

[53] NE Day 4, 35:1 – 35:6.

the Wukari [massacre]" in his childhood showed that Criterion C symptoms were absent.[54]

70 Dr Sarkar disagreed with Dr Cheok and the Prosecution's characterisation. According to him, the failure of Ilechukwu to mention the Wukari massacre to anyone – "to the interrogators after arrest", "in his 2014 court testimony" or to "Dr Ung when he saw him in 2016" – was something that was "entirely consistent with someone who avoided talking about the [Wukari massacre] because it is so distressing".[55] The Defence also submitted that the observations recorded in Dr Sarkar's reports showed that Ilechukwu satisfied Criterion C.[56] That report also stated that, "following [Ilechukwu's] experience during childhood, he only trusted those who were Igbo" and "every time I heard of death and killing, don't feel like associating with Hausas, no Hausa friend".[57]

71 Dr Ung was also of the view that Criterion C was satisfied. In his report, he recorded Criterion C1 as "severe/markedly elevated" and Criterion C2 as "moderate/threshold".[58] In relation to Criterion C1, Dr Ung stated that Ilechukwu would "pray", "read the Bible", and "play football" to avoid thinking about the 1990 childhood trauma. As for Criterion C2, Dr Ung stated that Ilechukwu avoided places which reminded him of the Wukari massacre as well as Muslim people.[59]

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[54] Prosecution's Closing Submissions, para 148.

[55] NE Day 4, 38:23 – 38:24.

[56] Defence's Submissions, para 64.

[57] Exhibit D16: Dr Sarkar's Handwritten IMH Clinical Records.

[58] Exhibit D6: Dr Ung's CAPS-5 Form, p 10.

[59] Exhibit D6 – Dr Ung's CAPS-5 Form, p 6.

72 At this juncture, I note that the Prosecution challenged Dr Ung's reliability as an expert to fairly administer the CAPS-5 Form as he was not formally trained in its use. While I accept that Dr Ung, unlike Dr Cheok, was not formally trained in the use of the CAPS-5 Form, he did have clinical experience in its use.[60] I do not find his lack of formal training in the use of CAPS-5, in itself, to be fatal to the reliability of his evidence.

73 I do not accept Dr Cheok's opinion that Ilechukwu did not display "persistent avoidance" in light of the evidence presented. There are numerous examples that Ilechukwu avoided "Hausas", "Muslims", and "Wukari", the site of the massacre:

(a) Ilechukwu never again returned to Wukari in North Nigeria.[61]

(b) Ilechukwu said to Dr Sarkar that "every time I heard of death and killing, don't feel like associating with Hausas, no Hausa friend".[62]

(c) Ilechukwu also told Dr Cheok that he "avoids Wukari".

74 I also see no reason why Ilechukwu would lie about avoiding "Hausas" or "Muslims" in general. I also note that all the experts agreed that Ilechukwu's IQ is "below average".[63] I find it implausible for Ilechukwu to have embellished his account with the view of satisfying Criterion C. I also find the evidence of Ilechukwu's failure to mention the Wukari massacre from the years 2011 to 2016 (to Dr Sarkar) to anyone from CNB or the Prisons to be consistent with

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[60] NE, Day 4, p 59.

[61] Exhibit D4 – Dr Sarkar's Report, pp 3 – 4.

[62] Exhibit D16 – Dr Sarkar's Handwritten IMH Clinical Records; NE, Day 5, p 100.

[63] NE, Day 5, 56:14 – 56:17.

the Defence's theory that Ilechukwu suffered from "persistent avoidance" of stimuli relating to the Wukari massacre.

75 I also do not think much of the Prosecution's observation that Ilechukwu failed to avoid his mother, who continuously spoke about the Wukari massacre. I agree with the Defence that it was not reasonable to expect a young child to avoid his mother.[64]

76 Thus, I find that Criterion C is satisfied.

Criterion D

77 Criterion D of the DSM-5 PTSD Criteria is reproduced here:

[64] Defence's Reply Submissions, para 75.1.

> **D Negative alterations in cognitions or mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidence by two (or more) of the following:**
>
> 1 Inability to remember an important aspect of the traumatic event(s) (typically due to dissociative amnesia and not to other factors such as head injury, alcohol, or drugs).
>
> 2 Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (*e.g.,* "I am bad," "No one can be trusted," The world is completely dangerous," "My whole nervous system is permanently ruined").
>
> 3 Persistent, distorted cognitions about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others.
>
> 4 Persistent negative emotional state (*e.g.,* fear, horror, anger, guilt, or shame).
>
> 5 Markedly diminished interest or participation in significant activities.
>
> 6 Feelings of detachment or estrangement from others.
>
> 7 Persistent inability to experience positive emotions (*e.g.,* inability to experience happiness, satisfaction, or loving feelings).
>
> [emphasis added]

78 Both Dr Ung and Dr Sarkar provided evidence that at least two of the sub-criterion were satisfied. I will deal with the evidence of each Defence expert in turn.

Dr Sarkar

79 During the Remitted Hearing, Dr Sarkar stated that Ilechukwu had "persistent and exaggerated beliefs or expectations about oneself" (Criterion

D2).[65] This was based on Ilechukwu's statements that "I am dull. You know, I am stupid" and his stating "no one can be trusted, the world is an unfair place". Dr Sarkar also said that Ilechukwu had an "inability to experience positive emotions" (Criterion D7) as Ilechukwu "had no friends except one or two of his own tribe" and that "he has had a casual few girlfriends but he has no relationship that is warmth and positivity".[66] Dr Sarkar also stated that Ilechukwu suffered from "feeling[s] of detachment or estrangement from others"[67] (Criterion D6) because there was no one rushing to help him. Lastly, Dr Sarkar believed that Ilechukwu suffered from "diminished interest or participation in significant activities" (Criterion D5) as Ilechukwu refused to eat or drink after his 2011 arrest.[68]

80 I have difficulty accepting Dr Sarkar's bases for opining that Criterion D2 was satisfied. Firstly, he premised this solely on Ilechukwu's testimony in court and at the earlier trial (CC 32 of 2014). There would have been a stronger case had this conclusion been based on material gathered in his clinical interview with Ilechukwu. Secondly, it is not clear that Ilechukwu's "persistent and exaggerated beliefs" were causally linked or attributable to the Wukari massacre. Evidence that Ilechukwu had such beliefs during childhood or early adulthood would have been more persuasive. This was not presented to the court. Thus, I could not rule out that Ilechukwu's beliefs were caused by his arrest in 2011 and the events thereafter.

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[65] NE, Day 4, 44:5 – 44: 10.

[66] NE, Day 4, 41:14 – 41:17.

[67] NE, Day 4, 42:6 – 42:7.

[68] NE, Day 4, 42:12 – 42:14.

81 In relation to Criterion D7, Dr Sarkar was of the view that Ilechukwu's lack of friends or romantic relationships demonstrated that he had a "persistent inability to experience positive emotions". This conclusion seems reasonable. As for Criterion D6, Dr Sarkar concluded that this was made out by Ilechukwu's feelings that there was "no one rushing to help him". I am not certain how this conclusion follows from those feelings which relate to a sense of abandonment rather estrangement or detachment. Lastly, Dr Sarkar's opinion that Criterion D5 was satisfied is questionable as it is not clear that his refusal to eat or drink was attributable to the Wukari massacre. It seems to be that this symptom was due to Ilechukwu's 2011 arrest than to the traumatic Wukari massacre.

Dr Ung

82 Dr Ung stated that the following criteria were satisfied:

(a) D2 as Ilechukwu displayed strong negative feelings about the world, stating "the world is not okay…I don't know how to explain".[69]

(b) D4 as Ilechukwu felt "pronounced" feelings of anger and sadness more than 50% of the time.[70]

(c) D5 as Ilechukwu became less interested in socialising and stopped exercising for a long time.[71]

(d) D6 as Ilechukwu felt estranged from his family.[72]

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[69] Exhibit D6: Tab C5. Dr Ung's CAPS-5 Form, pp 5 - 6.

[70] Exhibit D6: Tab C5. Dr Ung's CAPS-5 Form, pp 5 - 6.

[71] Exhibit D6: Tab C5. Dr Ung's CAPS-5 Form, pp 5 - 6.

[72] Exhibit D6: Tab C5. Dr Ung's CAPS-5 Form, pp 5 - 6.

(e) D7 as Ilechukwu could not feel happy after the Wukari massacre.[73]

83 Dr Ung's opinion that Ilechukwu suffered from D2 was based on an interview with Ilechukwu in a clinical setting. I accepted his clinical assessment that Ilechukwu suffered from "persistent negative thoughts or expectations" after the Wukari massacre based on the recorded statements from Ilechukwu that "The world is not OK", "the world is not the same again", "what happened made everything different", "people may not be trustworthy", and "my life is full of pain and suffering".[74] I also accept Dr Ung's opinion that Ilechukwu suffered from D4 for the same reason.

84 Dr Cheok's evidence was that whatever "negative alterations in cognitions or mood" experienced did not reach the requisite level of intensity or frequency.[75] However, Dr Cheok did not explain why this was so.

85 Given that at least two sub-criteria were satisfied, I find that Criterion D is satisfied.

Criterion E

86 Criterion E of the DSM-5 PTSD Criteria states as follows:

> **E Marked alterations in arousal or reactivity associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidence by two (or more) of the following:**

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[73] Exhibit D6: Tab C5. Dr Ung's CAPS-5 Form, p 15.

[74] Exhibit D6 – Dr Ung's 2nd Medical Report, p 6.

[75] NE Day 4, 35:9 – 35:18.

> 1 Irritable behaviour and angry outbursts (with little or no provocation) typically expressed as verbal or physical aggression towards people or objects.
>
> 2 Reckless or self-destructive behavior.
>
> 3 Hypervigilence.
>
> 4 Exaggerated startle response.
>
> 5 Problems with concentration.
>
> 6 Sleep disturbance (*e.g.,* difficulty falling or staying asleep or restless sleep).
>
> [emphasis added]

87 These are the views of the experts:

(a) Dr Sarkar recorded Ilechukwu as being "forgetful since childhood".[76] The Defence interpreted this as satisfying Criterion E5.[77]

(b) Dr Ung recorded Criterion E3, E4, E5, and E6 as present.

(c) Dr Winslow recorded Criterion E5 and E6 as present.

(d) Dr Cheok recorded all six aspects of Criterion E to be absent.

88 I first deal with Criterion E5. Dr Sarkar recorded in his report the following statements made by Ilechukwu:[78]

> I am not intelligent. When I was another school I was very good at sports. Study is not so good. The only thing I like is sport. Reading is hard for me. Mathematics, I struggle. From primary school on, I have reading problem. Writing is also a problem. Many mistakes with spelling. Mathematics I struggle unless it is a simple one.

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[76] Exhibit D4 – Dr Sarkar's Report, p 3.

[77] Defence's Closing Submissions, para 86. 4

[78] Dr Sarkar's Report, p 4 para 15.

89 Dr Sarkar also stated in the Remitted Hearing that "[Ilechukwu] has cognitive deficits which are in the realm of attention, concentration …"[79] but without explicitly linking this to Criterion E5.

90 Dr Cheok disagreed that Ilechukwu's "poor concentration" was attributable to the traumatic Wukari massacre. He believed them to be due to "hunger and poverty" that Ilechukwu suffered when he was a child.[80]

91 Dr Ung rated Criterion E5 as "severe/markedly elevated". Dr Ung disagreed with Dr Cheok that whatever "poor concentration" Ilechukwu suffered from was due to "hunger and poverty" in the Remitted Hearing, stating:[81]

> …I mean if we were to attribute his poor concentration, which was the thing I was most struck with when I first see him – in fact he had to repeat the same year three times which is what made me wonder what was going on – that just to me he wouldn't be able pursue his interests in sports if he truly you know he was so malnourished and hungry. You know, he just won't have the energy.

92 I find it more likely than not that Ilechukwu's "poor concentration" was due to the Wukari massacre than any "hunger or poverty" that Ilechukwu might have suffered when he was young. The following are my reasons:

(a) Ilechukwu's failure to "study" appeared prolonged and consistent. He admitted that he was poor at reading, writing and mathematics since primary school. This appeared to me more consistent

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[79] NE Day 4, 30:13 – 30:15.

[80] NE Day 5, 139:10 – 139:13; Exhibit P81 – Dr. Cheok's Report at [12].

[81] NE, Day 4, 96:7 – 96:10.

with an intrinsic mental inability to "concentrate", rather than one which fluctuated depending on whether he was hungry.

(b) I also find Dr Cheok's explanation that Ilechukwu's "poor concentration" was due to "hunger and poverty" to be inconsistent with Ilechukwu's preference for sport.

93 Thus, I find, on balance, that Criterion E5 is satisfied.

94 Both Dr Winslow and Dr Ung were of the view that Criterion E6 was satisfied. Dr Winslow's basis for concluding that Criterion E6 was satisfied was bare: all he stated was that Ilechukwu had "difficulty initiating and maintaining sleep" and "nightmares".[82] However, Dr Ung stated that Ilechukwu had "pronounced" difficulties falling and maintaining "every night", was "scared of sleeping" and would "wake up many times". He also said that Ilechukwu had to sleep accompanied by his mother.[83]

95 Dr Cheok did not think that Ilechukwu had "sleep disturbance" (Criterion E6), as Ilechukwu informed him that he "[slept] good as a child".[84] Dr Cheok, however, acknowledged that Ilechukwu suffered from nightmares, stating in his report that "[Ilechukwu] experienced nightmares of someone chasing him during his primary and secondary school" and that the "frequency of nightmares was several times a month and not only a daily basis".[85] The Prosecution pointed out that the DSM-5 PTSD Criteria (Childhood) prescribes

[82] Exhibit D7 – Dr Winslow's Report, p 8.

[83] Defence's Closing Submissions, para 88.5.

[84] Exhibit P81 – Dr Cheok's Report at [12].

[85] Exhibit P81 – Dr Cheok's Report at [12].

Criterion E6 as "difficulty falling or staying asleep or restless sleep", and that the presence of nightmares falls within another criterion, namely Criterion B2, "recurrent distressing dreams".[86] I agree that this meant that something more than "nightmares" was required to satisfy this criterion. Dr Ung provided that evidence, stating that Ilechukwu was prone to waking up many times a night and slept with his mother. I did not think it likely that Ilechukwu was lying about this. On balance, I find Criterion E6 to be satisfied.

96 Accordingly, I find Criterion E to be satisfied as at least two sub-criteria were present.

Criterion F

97 Criterion F prescribes that the "Duration of the disturbance (Criteria B, C, D, and E) is more than 1 month". Both the Prosecution and Defence experts disagreed on what this meant.

98 Dr Cheok was initially of the view that symptoms had to be present "daily" for at least a month, before revising his position that the symptoms had to be present for a "significant part" of the month.[87] Dr Cheok clarified this to mean that at least "some of [the] symptoms need to need to be present every day … in whichever combination",[88] while acknowledging that the DSM-5 PTSD Criteria did not expressly say that.[89]

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[86] Prosecution's Closing Submissions, para 149.

[87] NE, Day 5, 144:14 – 146:1.

[88] NE, Day 5, 146:23 – 146:25.

[89] NE, Day 5, 146:24 – 146:25.

99 Dr Sarkar disagreed with Dr Cheok's opinion that the symptoms must be present daily for at least one month. Instead, he stated that "if [Ilechukwu] had the onset of PTSD in his childhood that he has suffered from symptoms of it sometimes more sometimes less – that is the natural course of the illness – throughout his lifetime".[90] I take this to mean that Dr Sakar believed that the symptoms, in whatever combination, had to be present for a period of more than one month, and that there was no requirement for at least "some of the symptoms to be present every day".

100 The Defence based its contention that the DSM-5 PTSD Criteria does not require PTSD symptoms to be present daily for a month on the full scoring rubric in the CAPS-5 Form.[91] The full scoring rubric is reproduced here:

> **0 Absent:** The respondent denied the problem or the respondent's report doesn't fit the DSM-5 symptom criterion.
>
> **1 Mild / subthreshold**: The respondent described a problem that is consistent with the symptom criterion but isn't severe enough to be considered clinically significant. The problem doesn't' satisfy the DSM-5 symptom criterion and thus doesn't count towards a PTSD diagnosis.
>
> **2 Moderate / threshold**: The respondent described a clinically significant problem. The problem satisfies the DSM-5 symptom criterion and thus counts towards a PTSD diagnosis. The problem would be target for intervention. This rating requires a minimum frequency of 2 X month or some of the time (20 - 30 %) PLUS a minimum intensity of Clearly Present.
>
> **3 Severe / markedly elevated:** The respondent described a problem that is well above threshold. The problem is difficult to manage and at times overwhelming, and would be a prominent target for intervention. This rating requires a minimum frequency of 2 X week or much of the time (50 - 60%) PLUS a minimum intensity of Pronounced.

[90] NE, Day 4, p 49.

> **4 Extreme / incapacitating**: The respondent described a dramatic symptom, far above threshold. The problem is pervasive, unmanageable, and overwhelming, and would be a high-priority target for intervention.

101 Based on the full scoring rubric and referring in particular to the "moderate/threshold" rating, the Defence submitted that a "minimum frequency of 2X month or some of the time (20 – 30%) PLUS a minimum intensity of Clearly Present" is sufficient to cross the threshold.[92] Although it is not clear that the CAPS-5 Form alone shows that the symptoms need not be present daily, it is, nevertheless, one of the diagnostic tools used to assess for the symptoms under the DSM-5 PTSD Criteria.

102 On balance, I find Dr Sarkar's view more consistent with the plain wording of Criterion F, which simply requires that the duration of the psychological disturbance to last more than a month. There was nothing in the DSM-5 PTSD Criteria which requires that the symptoms be present daily.

103 I therefore turn to analyse whether the Defence had discharged its burden of showing that Ilechukwu suffered from the symptoms in Criterion B to E, in whatever combination, for a period of more than one month. The Defence submitted that the evidence showed that Ilechukwu was suffering from various symptoms throughout the period from his childhood up to adulthood. I find that Criterion C was clearly present for longer than one month as the evidence showed that Ilechukwu never again returned to Wukari in North Nigeria,[93] and avoided mentioning the Wukari massacre to anyone in CNB or Prisons from 2011 to 2016. Similarly, I find Criterion E symptoms were present

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[93] Exhibit D4 – Dr Sarkar's Report, pp 3 – 4.

for more than a month, as the evidence showed that Ilechukwu struggled with his studies "from primary school on".[94] In light of the above, I accept the opinion of the Defence experts that Criterion F was satisfied.

Criterion G

104 Criterion G requires that "the disturbance causes clinically significant distress or impairment in relationships with parents, siblings, peers, or other caregivers or with school behaviour".

105 I accept Dr Sarkar's opinion that "impairment" was not an "all or nothing"[95] proposition and was a matter of degree. I assume that this was equally true for "clinically significant distress".

106 Dr Sarkar relied on the written statements of Nzube and Emeka to support his opinion that Ilechukwu suffered from either "clinically significant distress" or "impairment". The written statements reveal that Ilechukwu was a "loner in school, did not talk much to his family and was not very intelligent".[96]

107 Dr Sarkar also relied on the statements of Nzube and Emeka to conclude that there was "clinically significant distress" or "impairment". Ilechukwu's brothers had stated that he was a "loner in school, did not talk much to his family and was not very intelligent".[97] The Prosecution said that little weight could be placed on their written statements[98] as there was nothing by way of objective

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[94] Dr Sarkar's Report, p 4, para 15.

[95] NE, Day 4, p 50.

[96] Exhibit D10, Emeka's Statement dated 6 August 2018 at para 14 to 16.

[97] Exhibit D10, Emeka's Statement dated 6 August 2018 at para 14 to 16.

[98] Prosecution's Closing Submissions, para 124(a).

evidence to verify that the statements were Ilechukwu's brothers. I am unable to agree. The burden of proof rested on the Defence. Given the fact that this relates to events that happened so long ago and so far away, and in the circumstances he is in, it cannot be said that he has not done his best to produce whatever evidence he could. The fact that this evidence was not independently corroborated cannot prevent the court from coming to a conclusion based on what is available before it. The only issue is the quality of the evidence in support of and against the proposition. In that regard, due consideration must be given to the fact that the evidence of Ilechukwu's brothers was admitted without the benefit of cross-examination. There is nothing in their evidence to indicate to me that their evidence had been less than honest and was tailored to benefit Ilechukwu. I therefore accepted their evidence at face value.

108 On the part of the Prosecution, Dr Cheok pointed out that because Ilechukwu "has been able to finish school", " … has been able to open his business" and " … to finish his apprentice term as an apprentice term", that there was "no functional impairment throughout his life".[99] However, I accept Dr Sarkar's contention that "impairment" was not an "all or nothing"[100] proposition. I do not find that evidence of Ilechukwu's opening of a business, and ability to finish an apprentice term to be inconsistent with the Defence expert's opinion in this regard. Criterion G provides that the disturbance must cause "clinically significant distress or impairment in social, occupational, *or* other important areas of functioning". I do not read the word "or" as requiring the distress or impairment to be present in social, occupational *and* other important areas of functioning.

[99] NE, Day 4, p 36.

[100] NE, Day 4, p 50.

109 Dr Sarkar cited the following as further evidence that Ilechukwu suffered from "clinically significant distress":

> I am surprised to hear that [Ilechukwu] does not meet this criteria [from Dr Cheok] as Dr Cheok's report is full of descriptions of how stressed he has been throughout his lifetime, with these flashbacks, nightmares, etc, right from his school days. If that is not distress, what is?

110 I agree with Dr Sarkar that there was sufficient evidence to show that Criterion G was satisfied. I therefore find that Criterion G is satisfied on a balance of probabilities.

Criterion H

111 All experts agreed that this criterion was met.

Conclusion on PTSD Diagnosis

112 I summarise my findings on the various DSM-5 PTSD Criteria:

(a) Criterion A: There was no dispute between the Prosecution and the Defence that this was satisfied.

(b) Criterion B: There was no dispute between the Prosecution and the Defence that this was satisfied.

(c) Criterion C: I find that this was satisfied.

(d) Criterion D: I find that this was satisfied.

(e) Criterion E: I find that this was satisfied.

(f) Criterion F: I find that this was satisfied.

(g) Criterion G: I find that this was satisfied.

(h) Criterion H: There was no dispute between the Prosecution and the Defence that this was satisfied.

113 Accordingly, all eight criteria of DSM-5 PTSD Criteria are satisfied and a clinical diagnosis that Ilechukwu was suffering from PTSD subsequent to the Wukari incident is made out.

114 The weakest part of the evidence is in relation to Criterion F which relates to the duration of the symptoms. Even if I am wrong on this finding, it is important to note that the Wukari incident took place some 28 years ago. Ilechukwu had no access to psychiatric treatment which could have provided evidence on whether he had manifested the symptoms for more than one month. His mother, who would probably be the best person to give such evidence in the absence of evidence from medical professionals, was not available to give evidence on his behalf. The DSM-5 PTSD Criteria guide the psychiatrist in coming to a diagnosis of mental illness for the purpose of deciding on the course of treatment of that patient. On the other hand, the purpose of the forensic analysis in court is to determine questions of fact. The fact that it is not impossible and even probable that Ilechukwu suffered from PTSD on account of the Wukari incident remains relevant to the inquiry into whether he had suffered PTSS in 2011.

Issue 2: Whether Ilechukwu was suffering from PTSD after the 2011 arrest

115 The Defence submitted that the earlier episode of PTSD (after the Wukari massacre) in Ilechukwu's childhood produced a "sensitisation effect". A "sensitisation effect" means that Ilechukwu is at a higher risk of developing subsequent PTSD because of a past PTSD episode.

116 Dr Cheok agreed that there is a "possibility" of the "sensitisation effect" if Ilechukwu suffered from a PTSD episode in childhood:[101]

> Court: But, Dr Cheok, do I understand you to say that you would agree that if there was a PTSD episode at five years old then the events could – not saying will but could constitute trauma because of the sensitisation effect that the defence experts have talked about?
>
> Dr Cheok: I think there is a possibility. Yes, there is a possibility.

117 Dr Cheok also stated:[102]

> It follows that PTSD – a previous episode of PTSD, I agree that it puts him at higher risk of further episode of PTSD. That is I think undisputed.

118 Thus, there is a consensus among the experts that an earlier episode of PTSD places Ilechukwu at a higher risk of subsequent PTSD.

119 Dr Sarkar also said that if "[Ilechukwu's] first trauma had been the 2011 arrest, then I am entirely in agreement with Dr Cheok that all those [DSM-5] criteria would be very diligently gone through with a lot more strictness about them that what we are doing now".[103]

120 I have found at [113] above that Ilechukwu suffered from a PTSD episode in his childhood. Further, as I had observed in [114] above, even if a clinical finding on a diagnosis of PTSD is not justified on account of the weak evidence on the duration of the symptoms, the strong evidence of the presence

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[101] NE, Day 4, 147:17 – 147:23.

[102] NE, Day 4, 143:18 – 143:20.

[103] NE, Day 4, 140:7 – 140:11.

of the other symptoms weigh in favour of a finding that the "sensitisation effect" would be in play to place him at higher risk of PTSD in 2011.

Criterion A

121 In relation to Criterion A, the Defence submitted that there were two significant periods for the court to consider:

(a) At or around the time the Pocketbook statement was recorded (at or around the time of the arrest).

(b) At or around the time the Cautioned Statement was recorded (when he was informed of the death penalty).

At or around the time of the arrest

122 Dr Sarkar's evidence was that the initial arrest on 14 November 2011 was itself the traumatic event under Criterion A. This was a position he adopted only at the Remitted Hearing. In his written report, he adopted a different position, stating that Ilechukwu suffered a fresh episode of PTSD in 2011 as a result of becoming aware of the death penalty.[104]

123 Dr Sarkar relied on Ilechukwu's evidence at the trial of CC 32 of 2014, where Ilechukwu "use[d] words like 'war', 'control', people scattering, people lining, chaos, that sort of thing" to describe his arrest as his basis for concluding that Criterion A is satisfied.[105] None of the other experts echoed Dr Sarkar's view that Ilechukwu's arrest itself constituted the traumatic event under Criterion A.

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[104] Exhibit D4 – Dr Sarkar's Report at [73(b)], [80]

[105] NE, Day 5, pg 49, lines 6 – 17

124 I am not satisfied that Ilechukwu's version of events, *ie,* that he perceived the arrest as a "war", with "people scattering", proved that the manner of his arrest in 2011 was an event which exposed him to "actual or threatened death, serious injury, or sexual violence" as required by Criterion A. There was also no objective evidence to suggest that the CNB officers who arrested him exposed him to "actual or threatened death, serious injury, or sexual violence".

125 Dr Winslow also said in his report, under the heading "the period of time during which [Ilechukwu] suffered from PTSD":[106]

> [Ilechukwu] has suffered from lifelong PTSD. His PTSD symptoms were triggered and worsened when he was told that **he would be facing the death penalty when he was arrested**.
>
> [emphasis added]

126 However, Ilechukwu later admitted in the Remitted Hearing that he was not told that he would be facing the death penalty when he was arrested:[107]

> Q. And at the time that this statement was recorded on 14 November 2011 afternoon, no police officer had told you about the death penalty; correct?
>
> A. Yes, your Honour. Yes.

127 Accordingly, I could not attach any weight to Dr Winslow's suggestion that Criterion A was satisfied when Ilechukwu was arrested and told that he would be facing the death penalty.

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[106] Exhibit D7 – Dr Winslow's Report, para 23.

[107] NE, Day 3, 26:12 – 26:15.

At or around the time the Cautioned Statement was recorded

128 In his report, Dr Ung stated that "both the stress of facing a capital charge and being told that he may face the death penalty resulted in [Ilechukwu] re-experiencing previous traumatic memories and suffering a recurrence of PTSD".[108] Thus, it appears to me that Dr Ung was suggesting that Criterion A was satisfied because Ilechukwu was told that he may face the death penalty. Dr Sarkar's first articulated position in his written report was also that Ilechukwu suffered a fresh episode of PTSD in 2011 as a result of becoming aware of the death penalty.[109] None of the Defence experts explained how being verbally told that he would face the death penalty was an event which satisfied Criterion A. No expert evidence was adduced to support the claim that a verbal warning like this could constitute the requisite degree of trauma. I therefore find that the Defence has not proven the existence of the Criterion A traumatic event.

129 There is, nonetheless, some evidence that Ilechukwu suffered from specified PTSS after his arrest on 14 November 2011. Given that the DSM-5 PTSD Criteria prescribes that all eight criteria must be satisfied to constitute a positive PTSD diagnosis, and that I have already found Criterion A to be absent, it is clear that Ilechukwu did not suffer from a fresh episode of PTSD in relation to the 2011 events.

130 I now proceed to analyse whether Ilechukwu suffered from PTSS.

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[108] Exhibit D6 – Dr Ung's Report, para 23.

[109] Exhibit D4 – Dr Sarkar's Report at [73(b)], [80]

Issue 3: Whether Ilechukwu was suffering from PTSS

131 All the experts agreed that Ilechukwu suffered from at least some PTSS at some point in time. I have already analysed whether he had manifested PTSS as a result of the Wukari massacre (see above at [62] – [111]). I have also summarised my findings on the specific PTSS suffered by Ilechukwu as a result of the Wukari massacre (see above at [112]).

132 I now assess whether PTSS were present in the post-arrest period. Since the Defence's submission was that the PTSS affected his statements to the CNB from 14 November 2011 at 1.00pm (when the Pocketbook Statement was recorded) to 24 November 2011 (when the last of the Long Statements were recorded), I confine the analysis to whether PTSS were manifested during the relevant periods of time when Ilechukwu provided these statements to the CNB.

133 The Defence submitted that there were three relevant periods for consideration during which Ilechukwu had suffered from PTSS:[110]

(a) During the recording of the Pocketbook Statement when Ilechukwu was suffering from intense psychological distress.

(b) During the recording of the Cautioned Statement, when Ilechukwu was suffering from intense psychological distress, dissociative symptoms, persistent negative emotions, and concentration problems.

(c) During his week-long remand in Cantonment, when the Long Statements were recorded from Ilechukwu while he was suffering from

[110] Defence Reply Submissions, para 98.3 to 98.6.

intense and prolonged psychological distress, dissociative symptoms, persistent negative emotions, and sleep disturbances.

134 I address each of the relevant periods of time in turn.

During the recording of the Pocketbook Statement

135 Dr Sarkar did not explicitly identify the precise DSM-5 PTSD Criteria manifested by Ilechukwu at the time of the recording of the Pocketbook Statement. Instead, Dr Sarkar described the symptoms in more general terms:[111]

> Because of his experience he views the world in black and white, us and them; good and bad kind of way. People who attack and assault him during the arrest in his mind are the enemies. They are symbolically similar to what he experienced as a child and what he saw and read during the course of his formative years and life about the strife in Nigeria…the way he perceives it; it was like war. Everyone should fear. Fear, here, there, everybody. In his mind this is a war.

136 Dr Sarkar also added that Ilechukwu experienced:[112]

> A sensitive stimulus – in this case people barging through the door, getting him on the floor, turning him around, tying his back and that sort of thing, he is made a captive. This is within the first 24 hours of his arrival in a new country, for the first time in his life. For him this is similar, emotionally similar, symbolically similar to what he has experienced, what he has seen happen not just at five-year old but at several points during his adult life…

137 Although Dr Sarkar did not explicitly tie his analysis to a specific DSM-5 PTSD Criterion, the Defence submitted that Dr Sarkar's analysis showed that Ilechukwu suffered from Criterion B4 of the DSM-5 PTSD Criteria, which is

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[111] NE, Day 4, pp 124, 122-123.

[112] NE, Day 4, pp 124, 122-12

"intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s)".

138 The Prosecution submitted that there was "no expert evidence" in support of the Defence's assertion that Ilechukwu suffered from "intense psychological distress" (Criterion B4) because Dr Sarkar failed to explicitly state that he was talking about Criterion B4 in the Remitted Hearing. I am unable to accept this. It is clear to me that Dr Sarkar was in fact talking about Criterion B4 when he stated that "people who attack and assault him during the arrest in his mind are the enemies. They are symbolically similar to what he experienced as a child …". This is made apparent upon examination of the complete wording of Criterion B4, which states "intense or prolonged psychological distress at exposure to internal or external cues that *symbolize or resemble an aspect of the traumatic event(s)*" (emphasis added).

139 The Defence submitted that, based on Ilechukwu's evidence during the trial of CC 32 of 2014, as well as the Remitted Hearing, it is apparent that Ilechukwu suffered from intense or prolonged psychological distress (Criterion B4).

140 The Defence relied on the following excerpt of Ilechukwu's testimony from the earlier trial[113]:

> A. Before they – I was arrested. Before next day, I was still asleep – I was still inside the room when the police come. I was – there was a knock in my room.
>
> Q. Yes
>
> A. I come – I come out. I was advised – say we are – first. I was – there was a call stay: "Dear customer, do you need any

[113] Defence's BOD – Trial Transcript of 25 September 2014, p 54.

> Nokia or any phone?". I said: "No, I'm okay. I'm – I'm not getting for anything; I'm okay". So suddenly, er, I was – they come up, er, and knocked my door. Okay, I opened. All s-guys – I meet a lot of guys. They come inside, erm, grabbed me, I just – I just come because I don't know what is happening. As they come, they just controlled me like that, the way they want. They pushed me on the bed. They handcuffed me. They put belt. That was like – like it – there is a war. That like everybody, one should fear – fear here, everywhere, everyone is scattering, everyone is checking. I was like – I was ner-nervous what is happening.

141 The Defence also relied on the following part of Ilechukwu's testimony:[114]

> A. Yes. I was in a Hotel 81 when the CNB come inside. I was still sleeping when the reception called me and they said they asked do you care for food? I say no, I am okay. Suddenly just a knock come at the door. I open the door, there is a lot of guys just rush into the room, like a war. I was like how many guys. Many guys they push me towards the bed. I just I don't know what to do, I just give myself to them. They handcuffed me. They just put me on the bed. They ran everywhere, searched everywhere until they finished then before that they take me out.
>
> Q. How did you feel?
>
> A. I was scared.

142 The Prosecution did not provide any other reasons why Criterion B4 was not satisfied, other than submitting that it was a symptom not backed by expert opinion.

143 The following matters are also relevant in deciding whether Dr Sarkar's opinion should be accepted:

(a) The evidence of ASP Edmund Lim (PW25) ("Lim") and Senior SS Mohammad Abdillah (PW19) ("Abdillah"), who were part of the

[114] NE, Day 2, 57:2 – 57:14.

arresting party which arrested Ilechukwu at 11.14am on 14 November 2011.[115] Both Lim and Abdillah stated that they did not observe anything unusual about Ilechukwu's appearance, manner or behaviour at the time of the arrest.[116]

(b) However, Lim stated during the Remitted Hearing that he "[had] no independent recollection of the arrest" outside of what was stated in the "ops diary".[117]

(c) Abdillah also stated that he could not remember what Ilechukwu was doing when he reached Hotel 81 on 14 November 2011 (as part of the arresting party).[118]

(d) The Prosecution's evidence was that Ilechukwu refused to have his lunch on 14 November 2011 at 1.48pm.[119]

144 I did not find the Prosecution's witnesses to be helpful in shedding light on the circumstances of the arrest and the recording of the Pocketbook Statement. It was clear that they did not have specific recollection of the events that took place on the morning of 14 November 2011 and were relying on what was recorded in the Investigation Diary.

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[115] AB for Further Hearing – Statement of Lim Changwei, Edmund; Statement of Mohammad Abdillah Bin Rahman

[116] AB for Further Hearing – Statement of Lim Changwei, Edmund; Statement of Mohammad Abdillah Bin Rahman

[117] NE, Day 1, 25:15 and 26:8.

[118] NE, Day 1, 50:3.

[119] NE, Day 1, 27:17.

145 I recognise, however, that if something completely out of the ordinary had happened, it would have been recorded in the Investigation Diary. An indication of this was Ilechukwu's refusal to have his lunch at 1.48pm on the day of the arrest. This showed that he was sufficiently distressed to refuse food, even though he had not eaten anything since at least the previous night, as he was awakened by the front desk in the morning. This is not inconsistent with his position that he was under "intense or prolonged psychological distress".

146 A close examination of Ilechukwu's testimony (see above at [140] and [141]) reveals that he did suffer from some form of "fear" at the time of the arrest. It is possible that this fear was causally related to the Wukari massacre, based on Ilechukwu's description of his arrest as a "war" with "everyone scattering", and that the arrest itself provided either a cue that "symbolised or resembled an aspect of the traumatic" Wukari massacre. But it is equally possible that he was fearful because he was under arrest. The fact that this took place in a strange country would amplify the fear.

147 On the question whether Ilechukwu was exaggerating his perception of the arrest during his testimony in the trial of CC 32 of 2014, I am not inclined to think that he was. There was no reason for him to do so because PTSD was not contemplated at the time. Further, the Prosecution did not dispute the essential parts of his narrative, *ie,* that the CNB officers had burst into his room and that he was immediately pinned down and handcuffed before he was informed of anything.

148 Weighing the evidence, I find, on balance, that it showed that Ilechukwu was suffering from "intense psychological distress" at the time when the Pocketbook Statement was recorded. I note that the Pocketbook Statement was recorded about two hours after Ilechukwu's arrest at 11.14am on

14 November 2011. I took this to be sufficiently contemporaneous such that whatever symptoms suffered by Ilechukwu at the time of the arrest would have still been present when the Pocketbook Statement was recorded. Thus, I find that the Criterion B4 symptom was made out at the time the Pocketbook Statement was recorded.

During the recording of the Cautioned Statement

149 The Defence submitted that Ilechukwu suffered from the following symptoms during the recording of the Cautioned Statement:

(a) Criterion B3: Dissociative reactions;

(b) Criterion B4: Intense and prolonged psychological distress;

(c) Criterion D4: Persistent negative emotional state (*ie*, fear); and

(d) Criterion E5: Problems with concentration.

B3: Dissociative reactions

150 I note that Dr Sarkar's report stated that Ilechukwu suffered from "dissociative symptoms, which commenced after arrest when he became aware of death penalty".[120] Dr Winslow's report too expressed the same view.[121] Dr Ung's Report also stated that Ilechukwu suffered from Criterion B3 (dissociative reactions) after being charged. However, the "dissociative symptoms" detailed by Dr Ung appear to relate to the Wukari massacre and not

[120] Exhibit D4 – Dr Sarkar's Report, para 73b.

[121] Exhibit D7 – Dr Winslow's Report, para 25.

the 2011 events.[122] I disregard Dr Ung's opinion on Criterion B3 as the present inquiry involves determining whether PTSS existed in relation to the 2011 events and not the Wukari massacre.

151 Dr Sarkar clarified "dissociative symptoms" to mean the following:[123]

> Dissociation or dissociative symptoms imply short time-limited lapses in memories. That could be one manifestation. Another is experiencing symptoms such as being outside of one's body and looking in on oneself as though there are two parts to oneself, one that is observing the other part. And it also implies forgetting some critical parts of the traumatic experience.
>
> So there are three, broadly speaking, manifestations of dissociation, that you forget certain things over a short period of time about circumscribed incident about the trauma, you experience yourself from outside and you have, as I said, memory impairment about a critical part of the trauma.

152 Dr Sarkar elaborated on what these "dissociative symptoms" are (although this appeared to have been done in the context of Criterion D1):[124]

> …And finally an inability to remember an important aspect of the traumatic events typically due to dissociation and not other factors such as head injury, alcohol or drugs. I would submit to the court that his inability to associate the bag, the black luggage bag with two packets of drugs that were concealed within and his inability to associate Hamidah the co-accused with Maria, the person as she represented herself to him, represents this inability to remember. And immediately after arrest and the caution statement thereafter, I would submit is a manifestation of a dissociative phenomenon where he is so focused on protecting himself and getting retraumatised about his memory of the past…
>
> …So that he is not paying attention to any of the other things that were put to him and his answers in the first contemporary statements are very brief, monosyllabic almost, and even in the

[122] Exhibit D6 – Dr Ung's Report, para 24, p 11.

[123] NE, Day 4, 32:5 – 32:12.

[124] NE, Day 4, 44:14 – 45:13.

> caution statement when he discovers through the interpreter that there is a death penalty, so it just reaffirms his belief that he had.
>
> So that is an inability to remember.

153 From the above, Dr Sarkar appeared to base his conclusion on Criterion B3 on the following matters:

(a) Ilechukwu's inability to associate the Black Luggage with the two packets of drugs.

(b) Ilechukwu's inability to associate Hamidah as the person who represented herself to him.

(c) The first contemporary statements made to the CNB which were very brief and monosyllabic.

154 The Prosecution's reasons for rejecting the existence of Criterion B3 was that there was no expert evidence linking Ilechukwu's statements to Criterion B3 of the DSM-5 PTSD Criteria.[125] I do not agree with this reason because, as discussed above at [152] and [154], Dr Sarkar had linked Ilechukwu's statements to his conclusion that there were "dissociative symptoms". Even though he might have made this observation in the context of Criterion D1, it is clear that they also speak to Criterion B3. I therefore find that there was evidence that Ilechukwu had suffered from Criterion B3 during this period.

[125] Prosecution's Reply Submissions, para 68.

B4: Intense and prolonged psychological distress

155 Dr Ung's Report also stated that Ilechukwu suffered from Criterion B4 as there were "cues related to the [2011 case] triggering daily distress for a few months" in Ilechukwu, and Criterion D4 as Ilechukwu was diagnosed to be depressed by the prison psychiatrist.[126]

156 The Prosecution disputed that Ilechukwu suffered from "intense and prolonged psychological distress" (Criterion B4) at the time when the Cautioned Statement was taken. Their reasons were as follows:[127]

(a) There was no expert evidence linking these statements by Ilechukwu to Criterion B4 in the DSM-5 PTSD Criteria.

(b) It was not stated that Criterion B4 was experienced during the recording of the Cautioned Statement.

157 On the first reason, there was expert evidence linking Ilechukwu's statements (in the clinical interview) to Criterion B4. Dr Ung did provide evidence that Criterion B4 was satisfied because Ilechukwu experienced daily distress for a few months, and these were symptoms recorded by Dr Ung as having been experienced by Ilechukwu under the heading "after charge".

158 Although it is not clear on its face whether the "few months" during which Ilechukwu experienced "daily distress" include the period of time when the Cautioned Statement was taken, I find that it is likely that the initial period

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[126] Exhibit D6 – Dr Ung's Report, para 24, p 11. See also Exhibit PS-57 – Conditioned Statement Bin Kassim.

[127] Prosecution's Reply Submissions, para 68.

of his arrest would be the most stressful time. I therefore find that the Defence had shown that Ilechukwu suffered from Criterion B4 at the time when the Cautioned Statement was recorded.

D4: Persistent negative emotional state

159 It is not clear from Dr Ung's opinion that Ilechukwu suffered from Criterion D4 *ie,* a persistent negative emotional state at the time when the Cautioned Statement was recorded. I therefore find that Ilechukwu did not suffer from Criterion D4 at the time of the Cautioned Statement.

160 I do note, however, that Dr Ung's Report stated that Ilechukwu "feels sad. Was diagnosed to be depressed by the prison psychiatrist". Indeed the evidence showed that the prison psychiatrist had diagnosed Ilechukwu with disorder or depression disorder at or around 2 February 2012.[128] That being said, given that this is almost three months after the Cautioned Statement was taken, I could not make a positive finding that Ilechukwu suffered from a "persistent negative emotional state" at the time when the statement was taken.

E5: Problems with concentration

161 As for Criterion E5, Dr Ung stated that this was "difficult to quantify in view of his being in prison". There were no other experts who stated that Criterion E5 was satisfied.

162 I cannot accept the Defence's submissions, unsupported by expert opinion, that Ilechukwu suffered from Criterion E5. I find that Ilechukwu did not suffer from Criterion E5 at the time of the Cautioned Statement.

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[128] PS-57: Conditioned Statement of Suhaini Bin Kassim.

During Ilechukwu's remand in Cantonment

163 In relation to the Long Statements that were recorded during Ilechukwu's period of remand in Cantonment, the Defence submitted that Ilechukwu was suffering from the following PTSS:

(a) Criterion B3: Dissociative reactions.

(b) Criterion B4: Intense and prolonged psychological distress.

(c) Criterion D2: Persistent and negative beliefs about others (*ie*, the Investigating Officer cannot be trusted).

(d) Criterion D4: Persistent negative emotional state.

(e) Criterion E6: Sleep disturbance.

164 The Defence relied on Dr Sarkar's opinion in the Remitted Hearing as well as the observations recorded in his report as the basis for its submissions. In the Remitted Hearing, Dr Sarkar was of the view that Ilechukwu suffered from "intense paranoia" and "fear" of the Investigating Officer:[129]

[129] NE, Day 5, pp 131 – 132.

> The first day, the first couple of hours in the evening when the cautioned statement was taken, it was a different motivation to lie, and the long statement seven days later there was a very different motivation which was very specific to the investigating officer and Ilechukwu***'s perception of the investigating officer actually playing him and setting him in a kind of conspiratorial game where the conclusion had been waged right from the outset that he would be killed and the IO was just amassing evidence to justify the killing***, and he believed that he was not told the truth at the beginning, because he said "The IO did not explain to me how the baggage and the drugs were linked" and so on and so forth, so because he believed that the IO had not been honest and upfront with him, he said he would not be honest and upfront with him. This is in his 2014 testimony.
>
> And some of the reasons that he gives almost borders, as I said earlier, not so much psychosis but certainly paranoid. You have used the word heightened suspiciousness about the IO in your judgment. I think that people who have PTSD or any anxiety disorder, ***what we are talking about is fear. A heightened level of fear. Whether we call it post-traumatic stress or psychological denial or normal stress, whatever it is, intense fear of what is going to happen***. The suspicion that he had towards the IO in particular borders on sort of paranoia a bit more than normal suspicion than he would have.
>
> [emphasis added]

165 I accept that Dr Sarkar was referring to Criterion D2 and D4 in the above excerpt.

166 In its submissions, the Defence also relied on the following observations recorded in Dr Sarkar's report:[130]

(a) Ilechukwu saw his life leaving him.

(b) Ilechukwu was colder than he had ever been before in his life.

(c) Ilechukwu could not think.

[130] D4 – Dr Sarkar's Report, pp 7 – 8.

(d) Ilechukwu could not sleep.

(e) Ilechukwu felt *egwu,* or intense fear.

(f) Ilechukwu felt inhuman.

167 It is necessary to closely examine Dr Sarkar's observations in order to determine whether they truly support the Defence's submissions. I reproduce the relevant excerpts from Dr Sarkar's report in their entirety:

> 43. When asked what he meant by the term 'lost' he said 'I was very frightened. I was in shock. Even the CNB officers who saw me outside after this asked what is wrong and said I should trust the legal system as Singapore has a very fair system of justice.' He said he felt really weak, and was very hungry, his last meal being over a day and half earlier. He said he just 'lie down on floor'.
>
> 44. He said over the following few days he could not think 'like a human', which he clarified meant he could not think logically. He said 'For seven days they kept me. It was so cold. I have never shivered so much in my life. I lie on the floor and saw my life leaving me. I was dying'. When asked what he meant by it, he said he felt he was out of his body looking at himself lying on the floor and feeling that his 'life was leaving me'.
>
> 45. He said during the next few days the only contact he had with the outside world was 'when they came to do spot-checks and to ask me to sign if I did not want to eat. I did not eat much at all', he said…They say the temperature is fixed. They could not give me blankets when I asked.
>
> 46. He said food, drinks and toilet breaks were provided and denied any coercion on part of interrogators. He claimed that he was in shock, had no appetite, and could not sleep because of the cold and 'Awu' (an Igbo word that the interpreter said means intense fear). He described himself to be 'not feeling like a human'.
>
> 48. He said for a week before he made the long statements he ruminated about death and dying. He claimed that the 'main officer' who was interrogating him had said 'You are lying. You will hang' and was convinced his life was in immediate danger. He said that he therefore 'lied a lot' as he did not wish to die …
>
> 49. …I could not link black luggage and Maria with 2 packets of drugs and Hamida. My mind could not think.
>
> 51. Whilst describing this period in custody, he often had a dazed staring look, eyes fixed to a point on the wall, with no blinking, and occasional tears streaming down, shallow breath which rapid and audible. He sat transfixed and gently kept shaking his head. Then he sobbed loudly.

168 From the above, I accept that Dr Sarkar was suggesting that Ilechukwu was suffering from Criterion B4, D2 and D4 symptoms at the time when the

Long Statements were recorded during his remand despite the fact that the observations were not explicitly linked to these symptoms.

169 Thus, taking the above into account, the only symptoms which were supported by an expert's opinion – in this case, Dr Sarkar – are Criterion B4, D2, and D4.

170 The Defence cited Ilechukwu's testimony at trial in CC 32 of 2014 as further supporting Dr Sarkar's opinion. Ilechukwu stated the following in the trial of 2014:[131]

(a) That he felt like "dying there" when he was in Cantonment for one week.

(b) That he saw his "life going out from my hand".

(c) That he was "like dying" because his body was "blocked already".

(d) That the IO "don't want to tell me exactly…how this drug have a part to play with me".

(e) That the IO "don't want me to know – to know the truth because he only lay his foundation on lies".

(f) That he had "no knowledge of what [the IO was] saying, I only follow him what I know about it, I say, "Yes, I know this"" and "I would say 'no' to him because my life is in danger".

[131] Defence's BOD – Trial Transcript of 25 September 2014, pp 60 – 61.

171 The Prosecution disputed that Ilechukwu suffered from Criterion D2, D4 or B4 symptoms.

B4: Intense and prolonged psychological distress

172 The Prosecution submitted that Dr Sarkar did not express an expert view on Criterion B4.[132] I disagree on this point as I already found that Dr Sarkar expressed the opinion that B4 was satisfied (although not by way of an express statement in his report) (see above at [167]). On balance, I find that there was evidence that Ilechukwu was suffering from "intense psychological distress" during the period in which he was placed in remand. The words which Ilechukwu used to describe his period of remand are extreme and forceful, implying a degree of intensity which was out of the ordinary. Furthermore, Ilechukwu's recollection of his time in Cantonment was made in the trial of CC 32 of 2014. I did not think it likely that Ilechukwu was exaggerating his mental conditions experienced during the stint in remand at the time of the 2014 trial. The evidence given by Ilechukwu in the trial of CC 32 of 2014 is also broadly consistent with Ilechukwu's self-reported symptoms to Dr Sarkar in the First Sarkar Report of 6 March 2017. I find that Ilechukwu was experiencing the Criterion B4 symptom of "intense and prolonged psychological distress" when he was remanded in Cantonment.

D2: Persistent and negative beliefs about others

173 Next, in relation to Criterion D2, the Prosecution stated that Dr Sarkar's comments on Ilechukwu's alleged paranoia should be regarded as distinct from, and should not be conflated with PTSS. This was because any alleged paranoia

[132] Prosecution's Reply Submissions, para 73(a).

suffered by Ilechukwu stemmed from Ilechukwu's supposed abnormal personality (on Dr Sarkar's evidence) and in any event was not the subject of the inquiry in the Remitted Hearing.[133]

174 I did not agree with the Prosecution that Dr Sarkar's evidence showed unequivocally that he believed that Ilechukwu alleged paranoia stemmed solely from Ilechukwu's supposed abnormal personality. During the Remitted Hearing, Dr Sarkar also referred to Ilechukwu's paranoia in the context of Criterion D3 (distorted cognition):[134]

> Another criteria is persistent distorted cognition, so thinking about the cause or consequences of the traumatic event that led to the individual to blame himself or others. Now, we know from his Wukari incident that he has persistently blamed the Hausas and Muslims and kept his distance from them apart from when he has to do business with them. These are all sort of impersonal relationships that is necessary and as a tradesman you cannot avoid engaging in that kind of thing.
>
> **Which also know from his arrest in 2011 that his view of the investigating officer Mr Deng is extremely negative and I will provide evidence during the course of these proceedings to show that his fear and dislike for this gentleman borders on almost the delusional. He is so paranoid about what the investigating officer represented to him during the entire process of interrogation. That is <u>distorted cognition</u>.**
>
> [emphasis added]

175 Accordingly, I find that there was evidence to support a finding that Ilechukwu was suffering from the Criterion D2 symptom of "persistent and negative belief about others" when he was remanded in Cantonment.

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[133] Prosecution's Reply Submissions, para 73(b).

[134] NE, Day 4: 43:9 – 43:25.

D4: Persistent negative emotional state

176 Lastly, as for Criterion D4, the Prosecution submitted that Dr Sakar's views should be treated with caution as Ilechukwu's account to Dr Sarkar about his fearful reaction upon service of the charge was not wholly truthful or at the very least, greatly embellished.[135] The Prosecution also stated that there was no reason for Ilechukwu to be fearful of his life unless he was guilty of the charge faced.

177 Here, I was only concerned with whether Ilechukwu was suffering from Criterion D4 during the period of remand *after* the charge had been served on him. I do not think the lies which Ilechukwu allegedly told Dr Sarkar in relation to the service of the charge particularly relevant. I also could not take into account the possibility of Ilechukwu's guilt as furnishing an alternative explanation for his fearful reactions as this would involve exceeding the Terms of Reference.

178 As in the case of Criterion B4, I am again of the view that the words Ilechukwu used to describe his period of remand in Cantonment during the trial of CC 32 of 2014 to be extreme and forceful. They display a degree of negativity which was unusual and persistent. I do not think it likely that Ilechukwu was lying or exaggerating his emotional state during his stint in Cantonment. There was no reason for him to have done so at the time. Ilechukwu's testimony on his emotional state in Cantonment is also broadly consistent with the observations recorded in the First Sarkar Report. I also disagree with the Prosecution's submission that there was no reason for Ilechukwu to be fearful

[135] Prosecution's Reply Submissions, para 73(c); para 70.

unless he was guilty. Being incarcerated in a foreign land, all alone and not knowing what was going to happen is more than sufficient reason for anyone to be fearful even if one were not guilty of any crime. I therefore find that Ilechukwu suffered from the Criterion D4 symptom of a "persistent negative emotional state" when he was remanded in Cantonment.

Effects of PTSS on Ilechukwu

179 Both the Prosecution and the Defence agreed that PTSD/PTSS does not directly cause lying. However, it was not the Defence's case that the PTSS directly caused Ilechukwu to lie in his statements to the CNB.

180 The Defence's case was that the 2011 arrest caused Ilechukwu to suffer from certain PTSS which negatively affected his mental state in ways that caused him to lie.[136] The Defence cited Dr Sarkar's opinion that the presence of the PTSS is likely to have led to an overestimation of the threat to his life which could have prompted him to unsophisticated and blatant falsehoods to save his life.[137]

181 The Defence particularised the effects of the PTSS on Ilechukwu during the different periods of time:[138]

> (a) During the recording of the Pocketbook Statement, Ilechukwu was suffering from intense psychological distress which caused him to adopt an overly defensive posture and lie to deny everything that was not in his possession.

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[136] Defence's Reply Submissions, para 96.

[137] Defence's Reply Submissions, para 96.

[138] Defence's Reply Submissions, para 98.3 – 98.6.

(b) During the recording of the Cautioned Statement, Ilechukwu's PTSS similarly caused him to adopt an overly defensive posture and lie to deny everything that was not in his possession.

(c) During the recording of the Long Statements, Ilechukwu's PTSS caused him to develop a persistent paranoia of the Investigating Officer which, in turn, caused him to consciously choose to maintain his previous lies in a misguided attempt to "outwit" the system and save himself.

182 From the foregoing, I am satisfied that there is sufficient evidence to support a finding that Ilechukwu was suffering from "intense psychological distress" (Criterion B4) during the recording of the Pocketbook Statement, "dissociative reactions" (Criterion B3) when the Cautioned Statement was recorded; and "intense psychological distress" (Criterion B4), "persistent and negative beliefs about others" (Criterion D2) and a "persistent negative emotional state" (Criterion D4) symptoms during the period of his remand in Cantonment. The further findings I have to make are:

(a) Whether the symptoms "intense psychological distress" caused him to adopt an overly defensive posture, and in turn lie when the Pocketbook Statement was recorded.

(b) Whether the "dissociation symptoms" caused him to adopt an overly defensive posture during the recording of the Cautioned Statement and lie to deny everything that was not in his possession.

(c) Whether "intense psychological distress", "persistent and negative beliefs" and a "persistent negative emotional state" caused him to develop persistent paranoia of the Investigating Officer which in turn

caused him to consciously maintain his previous lies when the Long Statements were recorded.

183 The Prosecution raised the following objections against the Defence's position that whatever PTSS suffered by Ilechukwu caused him to adopt an overly defensive posture:[139]

(a) The Defence did not state how the PTSS led to the conscious decision of Ilechukwu to take an "overly defensive course".

(b) It is not the position of any of the Defence experts that these PTSS had such a connection with Ilechukwu's lies to the CNB.

(c) The Defence's case that Ilechukwu had lied out of "fear and stress" in order to save himself, *etc*. had already been rejected by the Court of Appeal. In this light, it had been stated by the CA that "[t]o suggest that the [Ilechukwu] was justified to lie as a defensive move would be to turn reason and logic on its head" (*CA (Conviction)* at [61]).

(d) The Defence's case, at its heart, is simply that fear and stress caused Ilechukwu to choose to lie in order to save himself. It is unclear why such fear and stress should be considered "PTSS", as opposed to normal human reactions to the situation in question.

184 First, I do not find it fatal to the Defence's case that the Defence experts had not stated how *exactly* the PTSS led to Ilechukwu adopting an "overly defensive course". Secondly, I disagree that it was not the position of any of the expert witnesses' that these PTSS had such a connection with the lies to the

[139] Prosecution's Reply Submissions, para 78 - 82

CNB. Dr Sarkar was the expert who provided the connection between the PTSS suffered and Ilechukwu adopting an "overly defensive course". Thirdly, I disagree with the Prosecution's characterisation of the issue of Ilechukwu's lies having already been rejected by the Court of Appeal. The point of the present proceedings is to hear new evidence and decide whether Ilechukwu's PTSS could furnish an explanation – one backed by expert evidence – as to why he told lies. Lastly, I disagree with the Prosecution's submission that it is simply "fear and stress" which caused Ilechukwu to choose to lie in order to save himself. The Defence's case is based on *recognisable* psychiatric symptoms, as contained in the DSM-5 PTSD Criteria, which caused Ilechukwu's mind to act in certain ways, which in turn caused him to lie. From the perspective of a layman, it is understandable why one could characterise some of the PTSS symptoms, for *eg,* "intense psychological distress" and "persistent negative emotional state", as akin to ordinary human reactions of "fear and stress". However, I am of the view that the experts would have been capable of distinguishing ordinary human reactions of "fear and stress" from a diagnosis of specific PTSS. This is what the experts in these proceedings are tasked to do.

185 Having dealt with the Prosecution's objections, I now detail my findings on the specific effects which the various PTSS had on Ilechukwu during the three relevant periods of time.

During the recording of the Pocketbook Statement

186 I have already accepted that Ilechukwu was suffering from "intense psychological distress" during the recording of the Pocketbook Statement (see above at [148]). The issue left to be determined is whether the "intense psychological distress" caused Ilechukwu to "overestimate the threat to his life", which in turn caused him to lie.

187 The Pocketbook Statement reads as follows:[140]

> Q. When you arrive at airport in Singapore, how many luggage did you bring?
>
> A: One.
>
> Q: Is that the luggage? (Recorder's note: accused was pointed to a black bag on the floor in the room)
>
> A: Yes.

188 In my view, the Defence had failed to spell out with sufficient clarity how the "intense psychological distress" experienced by Ilechukwu at the time of the recording of the Pocketbook Statement caused him to overestimate the threat to his life, which in turn caused him to lie. In light of this, I am not prepared to make this finding. Flowing from this, I also make no finding on whether the "intense psychological distress" suffered by Ilechukwu indirectly caused him to lie.

During the recording of the Cautioned Statement

189 The issue here is whether the "dissociative reactions" suffered by Ilechukwu caused him to "adopt an overly defensive posture" and lie to deny everything that was not in his possession.

190 The effects that "dissociation" had on Ilechukwu were stated by Dr Sarkar in the following manner:[141]

> …I would submit to the court that his inability to associate the bag, the black luggage bag with two packets of drugs that were concealed within and his inability to associate Hamidah the co-accused with Maria, the person as she represented herself to

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[140] P42, Contemporaneous statement recorded from Ilechukwu Uchechukwu Chukwudi on 14 November 2011 at 1.00 pm, Case No 32 of 2014.

[141] NE, Day 4, 44:14 – 45:13.

> him, represents this inability to remember. And immediately after arrest and the caution statement thereafter, I would submit is a manifestation of a dissociative phenomenon where he is so focused on protecting himself and getting retraumatised about his memory of the past …

191 Thus, the primary effect of "dissociation", as stated by Dr Sarkar, is an "inability to remember" and a "focus on protecting" oneself and "[avoiding] getting re-traumatised about" past traumatic memories.

192 The Defence submitted that these effects experienced during the recording of the Cautioned Statement caused Ilechukwu to adopt an "overly defensive posture". Dr Sarkar said that Ilechukwu focused on protecting himself to avoid getting re-traumatised about past memories. Dr Sarkar also said that this was why Ilechukwu avoided talking about the Black Luggage.

193 Dr Cheok did not agree with this view. I note that Dr Sarkar did not say that this was a recognised psychiatric condition and the evidence he gave at [190] above was an opinion based on his clinical experience dealing with trauma patients. In view of this, I am unable to make a finding that this was what had happened in Ilechukwu's case. However, it was clear from the evidence that Ilechukwu was an individual deeply affected by the traumatic memories of the Wukari massacre. While a normal person might not have lied under such circumstances, it is not inconceivable that a person with a traumatic past would have done so if he believed that lying would get him out of the traumatic predicament that he was in, *ie*, that lying would be a means to "protect" oneself.

During the recording of the Long Statements

194 I have made findings that Ilechukwu suffered from "intense psychological distress", "persistent and negative belief about others" and a "persistent negative emotional state" during the recording of the Long

Statements (see above at [163] – [178]). The issue is whether these specified PTSS caused him to develop "persistent paranoia" of the Investigating Officer which in turn caused him to consciously maintain his previous lies. The following excerpts from Dr Sarkar's testimony reveal in greater detail the nature of the "persistent paranoia" that Ilechukwu had towards the Investigating Officer:[142]

> So his entire paranoia focuses on Investigating Officer Deng rather than the whole group of CNB officers who arrested him, because he also had said to me, and I see that in his testimony as well, that there are other officers who approached him during his arrest and questioned why did he look so fearful after the charge was read out to him…
>
> … and the long statement seven days later there was a very different motivation which was very specific to the investigating officer and [Ilechukwu's] perception of the investigating officer actually playing him and setting him up in a kind of conspiratorial game where the conclusion had been waged right from the outset that he would be killed and the IO was just amassing evidence to justify the killing, and he believed that he was not told the truth at the beginning, because he said "The IO did not explain to me how the baggage and the drugs were linked" and so on and so forth, so because he believed that the IO had not been honest and upfront with him, he said he would not be honest and upfront with him. This is in his 2014 testimony.
>
> And some of the reasons that he gives almost borders, as I said earlier, not so much psychosis but certainly paranoid…
>
> The suspicion that he had towards the IO in particular borders on sort of paranoia a bit more than normal suspicion that he would have.

195 From the above excerpt, Dr Sarkar appeared to be establishing the following:

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[142] Trial Transcript of 8 August 2013, pp 131 – 132.

(a) The Investigating Officer was "playing him" and "setting him up in a kind of conspiratorial game" where he was "amassing evidence to justify the killing".

(b) The Investigating Officer did not explain how the Black Luggage and the drugs were linked.

(c) Some of the reasons provided by Ilechukwu on why he failed to be honest with the Investigating Officer borders on paranoia.

(d) The suspicion that Ilechukwu had towards the Investigating Officer was more than normal.

196 In my view, the above effects are justifiably linked to the criterion of a "persistent and negative belief about others".

197 The Defence failed to detail how the remaining symptoms of "intense psychological distress" and a "persistent negative emotional state" suffered during the recording of the Long Statements caused Ilechukwu to develop a "persistent paranoia". As such, I deal solely with the submission that Ilechukwu's "persistent and negative belief about others" caused him to develop a "persistent paranoia" of the Investigating Officer.

198 Having examined excerpts of Ilechukwu's testimony in the 2014 trial, I agree with Dr Sarkar that there was some evidence which showed that Ilechukwu's displayed "persistent paranoia" towards the Investigating Officer. For instance, Ilechukwu stated the following in the 2014 trial:[143]

[143] NE, Day 6, 2014 Trial, 92:15 – 92:27.

> Sir, if you are in my position, have been abandoned in a courtroom, you have nobody who care about you, what you can only – only thing you can hear is, "Your life is in danger, your life is going to be take away from you. Er, er, indeed you see that this is now playing. They are desperate to take away your life because someone who is – is not who is – didn't care about your life – just is one shot, put you inside a courtroom, abandon you for one week" Make you like if – like ice-fish, you know. You think you 100% grab him, love him and tell him your heart, because he never come to know the truth. **If he come to know the truth, definitely he have to tell you the truth and he will never give you a torture for what you know; he didn't know anything about it. He already tortured you for 1 week; he tortured my life, he tortured my brain, he tortured me in hunger, he tortured me every angle of my way, then he never even want me to know what – what – what – what again you wanted me to tell him.**
>
> [emphasis added]

199 I therefore agree with the Defence's submission that Ilechukwu's "persistent and negative belief about others" caused him to display a "persistent paranoia" towards the Investigating Officer. As no submission was made on how this "persistent paranoia" caused Ilechukwu to consciously maintain his previous lies, I make no finding on this point.

CONCLUSION

200 In conclusion, I make the following findings (with reference to the Terms of Reference):

(a) whether Ilechukwu was suffering from PTSD

201 I find that Ilechukwu suffered from PTSD as a result of the Wukari massacre in his childhood. I also find that he did not suffer a fresh episode of PTSD after his 2011 arrest.

(b) the typical effects of PTSD on a sufferer;

202 There is no substantial dispute on this issue. The typical effects of PTSD on a sufferer mirror the diagnostic features in the DSM-5 PTSD Criteria.[144] The typical adult suffering from PTSD therefore manifests, for more than one month, the following effects or symptoms:

(a) One or more of the intrusion symptoms listed in Criterion B.

(b) One or both of the avoidance symptoms listed in Criterion C.

(c) Two or more of the negative alterations in cognitions and mood symptoms listed in Criterion D.

(d) Two or more of the marked alterations in arousal and reactivity symptoms listed in Criterion E.

(e) Clinically significant distress or impairment in social, occupation, or other important areas of functioning.

203 The full list of these symptoms are reproduced above at [42].

(c) if Ilechukwu was indeed suffering from PTSD:
(i) the period of time during which PTSD affected him;
(ii) the effects of PTSD on him during that period; and
(iii) the extent to which PTSD affected him when he gave his statements to the CNB.

204 Ilechukwu did not suffer from PTSD in Singapore. All the experts agreed that the PTSD episode arising from the Wukari massacre was not operative on Ilechukwu at the time when the Black Luggage was brought to Singapore. The PTSD episode therefore lasted from when Ilechukwu was five

[144] Submissions for the 2nd accused, para 39.

or six years old to some indefinite date before he came to Singapore on 13 November 2011.

(d) if Ilechukwu was not suffering from PTSD, whether he was suffering from PTSS. If he was suffering from PTSS:

(i) the precise symptoms should be identified;

(ii) the period of time during which PTSS affected him;

(iii) the effects of PTSS on him during that period; and

(iv) the extent to which PTSS affected him when he gave his statement[s] to the CNB

205 I find that Ilechukwu suffered from the following PTSS: (a) "intense psychological distress" (Criterion B4) during the recording of the Pocketbook Statement, (b) "dissociative reactions" (Criterion B3) when the Cautioned Statement was recorded; and (c) "intense psychological distress" (Criterion B4), "persistent and negative beliefs about others" (Criterion D2) and a "persistent negative emotional state" (Criterion D4) during the recording of the Long Statements when he was remanded in Cantonment.

206 I also find that Ilechukwu's "persistent and negative beliefs about others" (Criterion D2) experienced during the recording of the Long Statements, caused him to display "persistent paranoia" towards the Investigating Officer.

207 As for the issue of the extent to which PTSS affected Ilechukwu when he gave the three categories of statements, I note that the three Defence experts set out slightly different explanations as to why Ilechukwu might have lied in his statements. Dr Sarkar stated in his report that the presence of PTSD was "likely to have led to an overestimation of [the] threat to his life" which could have prompted him to utter unsophisticated and blatant falsehoods in order to

save his life.[145] Although Dr Sarkar did not say in his report that the presence of PTSS (as opposed to PTSD) would result in a similar effect, it was clear that Dr Sarkar held this view in light of his testimony at trial. As for Dr Ung, he stated that the two relevant effects that PTSD had on Ilechukwu were in relation to (a) effects on his thinking and decision making and (b) hyper-arousal and avoidance behaviour.[146] At the same time, Dr Ung also concurred with Dr Sarkar's view that the PTSD was "likely to have led to an overestimation of [the] threat to his life". Dr Winslow too expressed agreement with this aspect of Dr Sarkar's opinion, and also that "the defendant was suffering from acute symptoms of PTSD with dissociation around the time that he made the inconsistent and unreliable statements (between 24 November and 21 November 2011). This could be a factor relevant in providing an unreliable account." Dr Cheok, like the Defence experts, simply stated that there was no direct link between PTSD and lying.[147] As the Defence relied primarily on Dr Sarkar's view that Ilechukwu overestimated the threat to his life as a result of the symptoms, I confine my analysis solely to this aspect of his opinion. As I have already stated above at [188], I find that the Defence failed to spell out with sufficient clarity how the symptom of "intense psychological distress" caused Ilechukwu to overestimate the threat to his life during the recording of the Pocketbook Statement. For purposes of clarity, I also state that I find that the Defence had not shown how any of the *other* PTSS caused Ilechukwu to overestimate the threat to his life on a balance of probabilities in relation to the Cautioned Statement and Long Statements.

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[145] D4 – Dr Sarkar's Report, p 14.

[146] D7 – Dr Ung's 2nd Report, p 13.

[147] NE, Day 5, 58:1 – 58:2.

208 The foregoing paragraphs in this conclusion section are sufficient to address the Terms of Reference for this trial. However, there is one point that I would like to express which is beyond those terms. At [88] of the Grounds of Decision in *CA (Conviction)*, the Court of Appeal stated that "[w]hat tipped the scales are the numerous lies and omissions made by [Ilechukwu] in his statements, for ***which there is no innocent explanation***" (emphasis added). Although the Court of Appeal in CA/CM 22/2018 had not expressed it as such, it seems to me that the true question is whether, in view of the evidence at this trial and the findings that may be made from such evidence, such an innocent explanation is possible. As the answer is not within the Terms of Reference of the Remitted Hearing, I must be content merely to pose the question.

Lee Seiu Kin
Judge

Kristy Tan, Tan Wee Hao, Zhou Yihong and Uni Khng (Attorney-General's Chambers) for the Public Prosecutor;

Eugene Thuraisingam, Suang Wijaya, Johannes Hadi (Eugene Thuraisingam LLP) and Jerrie Tan (K&L Gates Straits Law LLC) for the second accused.