

HONG KONG / JUDGMENT

HKSAR v. Butt Muhammad ATEEQ

[2018] HKCFI 1258

COURT

Court of First Instance

DECIDED

14 May 2018

CASE / FILE NUMBER

HCMA13/2018

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMA 13/2018

[2018] HKCFI 1258 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 13 OF 2018 (ON APPEAL
FROM TMCC 1471 OF 2017)

BETWEEN HKSAR Respondent and Butt Muhammad Ateeq Appellant

Before: Deputy High Court Judge V Bokhary in Court Date of Hearing: 8 May 2018 Date of
Judgment: 14 May 2018

JUDGMENT

The Appellant faced three charges in the Magistrates Court. After trial he was acquitted on two charges and convicted on one. He appeals against that conviction, doing so on the pro forma grounds of appeal set out in Form 101. The charge on which he was convicted was of possession of an identity card relating to another person, contrary to section 7A(1A) of the Registration of Persons Ordinance (Cap 177). Its particulars were that on 28 February 2017 at No 411 Tai Kong Po, Kam Tin Road, Pat Heung in the New Territories the Appellant did, without lawful authority or reasonable excuse, have in his possession Identity Card No K943221(3) relating to one Ali Sadakat. At the trial the prosecution produced that identity card in evidence as Exhibit P1. A police constable, PC 5018 who was the third and most important prosecution witness, said as follows in evidence. P1 was in a wallet which he found in the Appellant's rear trousers pocket when he searched the Appellant. Believing P1 to be a fake, he declared arrest of the Appellant for, among other offences, possession of a fake identity card. Under caution, the Appellant made a verbal admission to the effect that he knew the person in P1, that that person was dead, that he used P1 for job interview and that it had nothing to do with his boss. The Appellant said in evidence that he had not said anything about P1 at the scene because it had not been shown to

him there. The Magistrate ruled the verbal admission admissible but ruled the record of an interview of the Appellant by the police inadmissible, saying that the circumstances of the interview were oppressive. Although the Magistrate initially referred to the oral admission being admissible, the Magistrate ultimately referred to having excluded it. At any rate, no weight was attached to the oral admission. Among the things said by the Appellant in evidence are the following. The wallet found by PC 5018 was found not on him but in some clothings in a room. He was aware that something was found in the wallet but he was not aware what was so found. He was not shown what was found. He told the police that the wallet was not his. One of the matters which troubled the Magistrate was this. The police evidence was that the Appellant was shoveling waste and pushing a trolley filled with it, and PC 5018 spoke of seeing the Appellant shoveling waste before he went up to him. But none of the photographs taken by the police at the scene showed any shovel or trolley. That raised a doubt in the Magistrate's mind as to whether the Appellant had been doing what PC 5018 said that he saw him doing. From that, the Magistrate said, it has to follow there would be a doubt if [the Appellant] has in fact made the verbal admission to [PC 5018]. Did that mean, the Magistrate wondered, that PC 5018's evidence of finding P1 on the Appellant could not be relied upon at all? The final paragraph of the Magistrate's Statement of Findings consists of a single sentence which reads Court finds the prosecution has a doubt regarding the missing tools and have excluded the verbal admission, I accept [PC 5018's] evidence that he actually found P1 in a wallet (P4) defendant was carrying. I find the defendant has no lawful authority or reasonable excuse to have P1 in his possession. Albeit on the papers, appeals of this kind from the Magistrates Court to the High Court are by way of rehearing. While due weight is to be attached to a magistrate's advantage of seeing and hearing the witnesses, the appellate judge will not affirm a conviction if not satisfied that it is safe. The Magistrate tried the case conscientiously of course, but has offered no explanation why PC 5018's evidence that he found P1 on the Appellant can be safely relied upon even though his evidence that the Appellant made a verbal admission to him cannot be safely relied upon. Neither of those two pieces of evidence is materially more susceptible to honest mistake than the other. In fairness to PC 5018, it should be stressed that neither anything said by the Magistrate nor anything said by me involves finding that he had not been honest. But the Magistrate not having felt it safe to rely upon PC 5018's evidence that the Appellant had made an oral admission to him, I am not satisfied that the reliance which the Magistrate placed on PC 5018's evidence of finding P1 on the Appellant is safe. Consequently, I am not satisfied that the conviction is safe. Accordingly, the appeal is allowed and the conviction is quashed. (V Bokhary) Deputy High Court Judge Mr Charles Lee, SPP (Ag) of the Department of Justice, for the Respondent The Appellant appeared in person - PAGE [* MERGEFORMAT - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V hSyw hSyw hSyw gdn9 :p#ij & # \$ & # \$ & # \$ [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r ~P(5 .}x E /,EE} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/

theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml 4m1` s\ 9z8 `f&8 pyA) IIQ> jp#jWZCy7 #hWIP w-8:~ 2%wb~ drs/downrev.xmlL 6)i6E @\*\YS \DQ, [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml gJs)rL. Vv5S TA E 2ZCt [ml84; uA~Z LX7Ge \ \$K/* #HXI drs/downrev.xmlL 6)i6E @*\YS \DQ, [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml #&\*Ys |\_WkEG@ JVLk8- TA E A7rB P\*8| I"/ uA~Z LX7Ge drs/downrev.xmlL 6)i6E @\*\YS \DQ, [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml gJs)rL. Vv5S TA E I"/ I[Zv \^P"a drs/downrev.xmlL 6)i6E @*\YS \DQ, [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK &tBL ;R,U VZ" E*p# ;R,U _V5i High Court Normal.dotm Windows User Microsoft Office Word Judiciary Hong Kong Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{465F0F17-A5E0-4615-8E9E-772BA43653A7}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=115743

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-butt-muhammad-ateeq-2018>

Prepared on 28 October 2026 · Esheria