

HONG KONG / JUDGMENT

HKSAR v. CHIA, SU YEN

COURT

Court of First Instance

DECIDED

14 August 2007

CASE / FILE NUMBER

HCMA243/2007

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bjbj HCMA 243/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 243 OF 2007 (ON APPEAL FROM KCCC 4940 OF 2006)

BETWEEN HKSAR Respondent and CHIA, SU YEN Appellant

Before: The Honourable Mrs Justice V. Bokhary in Court Date of Hearing: 14 August 2007 Date of Judgment: 14 August 2007

J U D G M E N T

The Appellant, a woman in her 30s of previous good character, was convicted after trial before Raymond Wong, Esq. in the Magistrate's Court at Kowloon City on a charge of theft and fined \$2,500. She now appeals against conviction. There was evidence on which the Magistrate could find, as he did, that the Appellant had, in a store, presented for purchase two digital video-discs from which she had detached the price labels and attached the price labels from cheaper digital video-discs, paid the lower amount and walked out of the store with the items thus purchased. These events took place at around 4:15 in the afternoon on 11 August 2006. At her trial the Appellant gave evidence to the effect that she has no recollection of what happened at the store. It was established by the defence that the Appellant had earlier that afternoon undergone the surgical removal of papillomata in a hospital from which she was discharged at about 2:40 p.m. The hospital was in Kowloon City while the shop was in Tsimshatsui. According to the Appellant's evidence what happened after she left the hospital was a blur, and she could not remember how she went from the hospital to the shop. So the defence was the absence of any guilty intent, and the issue at the trial was whether the circumstances pointed to the presence of guilty intent being the only reasonable inference. The Appellant's evidence was supported by the evidence of the

doctor who had operated on her. He said that the Appellant had been given an injection of 5 milligrams of midazolam for sedation and amnesia (to forget the painful injections of local anaesthetics to follow). It was his opinion that midazolam could cause a person to be unable to recall what he or she had done, that it might temporarily impair judgment and cause unusual or abnormal behaviour, and that it was most likely that the Appellant had been under the effect of midazolam when she left the hospital. As one would expect, there have been a number of past cases in which medical evidence as to mental state and capacity at the material time has been relied upon by a person charged with theft, whether by way of shoplifting or otherwise. Ultimately each case depends on its own circumstances. I have given this matter anxious consideration. Such an appeal as this is an appeal by way of rehearing albeit on paper. The reasons given by the Magistrate for inferring a guilty mind from the circumstances would be cogent reasons for doing so if the defence was of ordinary forgetfulness or preoccupation with other matters. But this is a case of a person likely to have been under the influence of a drug administered to her for the purposes of surgery. At the end of the day, I have come to the conclusion that the conviction is unsafe, and that the just course is to quash it. Accordingly, I allow the appeal and quash the Appellant's conviction. (V. Bokhary) Judge of the Court of First Instance High Court Mr Kevin Patterson, instructed by Messrs Chiu & Partners, for the Appellant Mr Raymond Cheng, of the Department of Justice, for the Respondent PAGE - A B C D 1udk 1udk i\$&H @d/Z o!@R< 5%4j 5%4j >~t6 HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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