

HONG KONG / JUDGMENT

HKSAR v. CHUI YUN WOO

COURT

Court of First Instance

DECIDED

2 August 2007

CASE / FILE NUMBER

HCMA1144/2006

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bjbj HCMA1144/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 1144 OF 2006 (ON APPEAL FROM KTCC NO. 1320 OF 2006)

BETWEEN HKSAR Respondent and CHUI YUN WOO (ed after trial of using a false instrument , contrary to section 73 of the Crimes Ordinance, Cap.200 (the Ordinance). The particulars of the charge was that he had used false instruments which were and which he knew or believed to be false, namely (i) a statement of Chun Shing dated 13 April 2005; (ii) a statement of Lau Ka dated 13 April 2005; and (iii) two entries dated 13 April 2005 in an investigation report, with the intention of inducing Ho Chak Kan to accept them as genuine, and by reason of so accepting them to do some act to his own or any other person s prejudice. He was sentenced to 160 hours of community service order. He now appeals against the conviction only. The prosecution case AUTONUMOUT The prosecution case, in a nutshell, was that the appellant a serving police officer attached to Traffic Kowloon East () at the material time fabricated (a) two witness statements purportedly made by a Mr Chun () and a Mr Lau (); and (b) two entries in an investigation report purportedly made by Sergeant 17760 (), and submitted them to his superior, Chief Inspector Ho () via PW3 and Senior Inspector Wong (), whereby the police was caused to take no further action in relation to a car collision incident between PW1 and PW2. AUTONUMOUT The car collision occurred on 12 March 2005 when PW2 reversed his vehicle and hit a parked vehicle belonging to PW2 s employer but was driven by PW2. PW2 offered to pay compensation but parties could not agree on the sum. Police was called. AUTONUMOUT The appellant was assigned the case on 16 March 2005 for investigation. AUTONUMOUT On 13 April 2005, the appellant by a minute () of the case file suggested no further action () be taken because the drivers involved had settled the case between them. In fact PW1 and PW2 had not reached settlement by then. They only reached settlement after mid June 2005. AUTONUMOUT Two witness statements in the name of PW1 and PW2 respectively and an investigation report were included in the case file. AUTONUMOUT The appellant s immediate superior PW3 read the statements and supported the appellant s suggestion of NFA. The file was passed on to PW3 s superior PW4. PW4 checked the witness statements and the verification of PW3 in the investigation report and endorsed the NFA

suggestion by the appellant. PW5 checked the two witness statements and the two verification entries purportedly made by PW3 and endorsed PW4's recommendation and agreed NFA. AUTONUMOUT Evidence before the court and accepted by the magistrate show that PW1, PW2 and PW3 had not made the respective statement/entries. AUTONUMOUT The incident came to light when the police informed PW1 and PW2 in relation to the NFA when parties were still in the process of settlement talk. The findings of the magistrate AUTONUMOUT When giving his verdict orally, the magistrate said this Taking all the evidence before me into consideration, I am satisfied beyond all reasonable doubt that you used the two statements and the two entries to induce your superior, Ho Chak-kan, to endorse your recommendation to close the file. I find you are guilty as charged. AUTONUMOUT In his Statement of Findings, the magistrate said Taking all the evidence before me into consideration I was satisfied that the Appellant knew that the two settlement statements and the two verification entries were false. I was satisfied beyond all reasonable doubt that by M.4 the Appellant used the settlement statements and the verification entries with the intention of inducing his superior Ho Chak-kan to endorse his suggestion to close the case in question. I found the Appellant guilty as charged. The applicable law AUTONUMOUT Before dealing with the ground of appeal, I set out the relevant legislation and the applicable law. AUTONUMOUT Section 73 reads A person who uses an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence and is liable on conviction on indictment to imprisonment for 14 years. AUTONUMOUT It is common ground that for this offence it is necessary to prove double intention :

- (a) an intention to induce somebody to accept the false document as genuine, and
 - (b) an intention that his victim, by reason of accepting the document, would do or not do some act to his own or any other's prejudice. AUTONUMOUT I would add that having read the relevant English authorities (including R. v. Campbell (Unrep. 80 Crim.App.R. 47 CA, and AG's reference (No. 1 of 2001) [2003] 1 Cr.App.R.
- 8) and the Hong Kong Court of Appeal case of HKSAR v. Kwan Hin Kee ({s_j}) the appellant intended to induce his superior to accept the two witness statements and the two verification entries as genuine; and (b) the appellant intended that his superior, by reason of accepting the documents, would do or not do some act to his own or any other person's prejudice. AUTONUMOUT Meaning of prejudice can be found in section 70 of the same Ordinance
- (1) Subject to subsections (2) and (4), an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs, will
 - (a) result in his permanent or temporary loss of property;
 - (b) result in his being deprived of an opportunity to earn remuneration or greater remuneration;

- (c) result in his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration;
 - (d) result in somebody being given an opportunity to earn remuneration or greater remuneration from him;
 - (e) result in somebody being given an opportunity to gain a financial advantage from him otherwise than by way of remuneration; or
 - (f) be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty.
- (2) For the purpose of this section, an act which a person has an enforceable duty to do and an omission to do an act which a person is not entitled to do shall be disregarded.
- (3) References in this Part to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to an instrument or copy as if it were a genuine instrument, or, as the case may be, a copy of a genuine one.
- (4) Where subsection
- (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy shall be treated as an act or omission to a person's prejudice.
- (5) In subsection (1)(a) loss d1Y) counsel for the appellant, raised a technical ground of appeal. There is no complaint in relation to the magistrate's findings of facts. The issue centred on the word prejudice. AUTONUMOUT Acton-Bond referred to the findings of the magistrate and submitted that the latter made insufficient findings of facts to substantiate the offence charged, in particular the magistrate failed to make any findings that the appellant intended to cause prejudice to another within the meaning of Section 70 of the Ordinance. AUTONUMOUT Bearing in mind that both PW1 and PW2 had told the appellant before the submission of M4 that parties were trying to settle, there could not have been any finding that the appellant intended to cause prejudice to another within the meaning of section 70, Mr Acton-Bond submitted. AUTONUMOUT Acton-Bond also submitted that the evidence before the magistrate does not allow an irresistible inference to be drawn that the appellant had the intention to cause prejudice. His main contention was that PW5's decision re the NGA is not final, in that PW5 could curtail it should parties concerned raised objection. PW5's duty was not just to sign off cases but to keep them under review, although PW5 acted on the documents in question, his reversible decision does not amount to a real prejudice, therefore not a prejudice within the meaning of section 70, Mr Acton-Bond contended. AUTONUMOUT Further, it is Mr Acton Bond's argument that according to the evidence, after PW5 endorsed PW1's suggestion, the decision of NFA taken was communicated to PW1 and PW2, as the appellant has worked in TKE for a long time, it is reasonable to infer that he must be aware of such a procedure. Such knowledge of procedure would throw doubt on whether the appellant did have the intention to cause prejudice when he submitted M4 with

the false documents. Respondent s reply AUTONUMOUT The stance of the respondent can be shortly stated. Ms Winnie Lam, Government Counsel on behalf of the Respondent, submitted that the second limb of the double intention was proved and that PW5 s decision of NFA was the prejudice as defined under section 70(1)(f). She submitted that the re-opening of investigation should there be any objection from the parties amounts to another duty under another mechanism, thus not affecting the performance of PW5 s duty in the present situation. Comments on the magistrate s findings AUTONUMOUT It is true that the magistrate never said anything about the need to prove double intention nor made any findings re the prejudice. For a case of this nature, it would be helpful (both to the parties involved and to the appellate court) if the magistrate sets out the ingredients required to prove the charge and the facts supporting those ingredients. Rehearing AUTONUMOUT An appeal under section 113 of the Magistrates Ordinance, Cap. 227 is by way of rehearing on the evidence before the trial court supplemented by such further evidence as the intermediate appellate court may admit under its statutory power to do so : see Chou Shih Bin v. HKSAR, FACC11/2004. AUTONUMOUT It falls upon me to review the evidence in this case, particularly those accepted by the magistrate, to see if the facts support the charge. AUTONUMOUT The evidence clearly shows that as the assigned investigating officer, it is the appellant s duty to prepare the investigation report. By the time he submitted M4 with the two witness statements purportedly from PW1 and PW2 in relation to settlement, PW1 and PW2 had not reached settlement and they had not given any such statement re settlement. PW3 also confirmed that the two entries of verification in the investigation report was not made by him. The appellant must know the two statements and the two entries were false but intended his superior to accept them as genuine. AUTONUMOUT What was the purpose of submitting M4? Clearly, via M4 with the supporting but false documents the appellant suggested to his superior that there should be NFA as parties have settled. What could his intention be? It would be absurd to say that the inference to be drawn is that he was being playful or making a joke. The appellant submitted M4 to his superior as part of the performance of his duty as an investigating officer, the irresistible inference to be drawn is that he not only intended that his superior would accept the false documents as genuine, but that his superior would, by so accepting, agreed with his suggestion of NFA in relation to the car collision incident. This latter or second intention is to cause prejudice to PW5 within the meaning of section 70 (1)(f). PW5 was clearly performing his duty when he accepted the false documents as genuine and agreed with the NFA suggestion. AUTONUMOUT It is my judgment that whether PW5 s decision was final or not is immaterial. I would add here that I do not agree with Miss s submission that the re opening of the investigation amounts to another duty under another obligation. The relevant wording of the legislation is in connection with his performance of any duty . There is no requirement that the performance of any such duty has to be a final and an irreversible one. While I accept that the prejudice has to be real and not a potential one, the prejudice caused to PW5 was real in that he did agree with the NFA suggestion. AUTONUMOUT It is unclear why the appellant did what he did. There is certainly no question of any financial gain. The fact that the appellant must be aware that PW1 and PW2 would be informed of the NFA decision once his

superior agreed with his suggestion does not, in my judgement, throw any doubt on the intention of the appellant to cause prejudice to his superior. The evidence against the appellant is overwhelming. There is no merit on the appeal and this technical ground fails. Appeal dismissed. (Judianna Barnes) Judge of the Court of First Instance High Court Miss Lam Tak Wing, Winnie, GC of Department of Justice, for HKSAR Mr Jonathan Edward Acton-Bond, instru 1udk 1udk Q R S T U V &`#\$ 5_ga 5_ga 5_ga & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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