

HONG KONG / JUDGMENT

HKSAR v. HUA CHIEN HAO

COURT

Court of First Instance

DECIDED

24 January 2007

CASE / FILE NUMBER

HCMA630/2006

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bjbj Appellant

Before: Deputy High Court Judge Line in Court Date of Hearing: 24 January 2007 Date of Judgment: 24 January 2007

J U D G M E N T

1. This is an appeal against a conviction for theft. The circumstances are rather unusual. The appellant was a man travelling through Hong Kong and he transited here, having flown in and intending to fly out on the same airline. In the course of his transit through the airport in Hong Kong, his hand baggage was x-rayed and it was opened and inspected and, inside it, was an airline life vest wrapped in an airline blanket and the airline vest had come from under the seat upon which this appellant had been sitting when he travelled into Hong Kong. He was charged with the theft of the life jacket and the blanket. He was acquitted in respect of the blanket because the magistrate judged that it may have been the case that he believed that he was entitled to take it and it was one of the perks that came with travelling on the airline. But he convicted of the life vest being of the view - reasonably, in my judgment - that no one could possibly think the life jacket was a freebee.
2. Argument in the case has centred very much around whether or not the items when placed in the piece of hand baggage would have been apparent to the appellant as he carried it. The bag was a foot by a foot and a half and 3 to 5 inches thick, and one knows what the other two enclosed items look like. I do not find it necessary to grapple with that and, for the sake of argument, I will go with the way the appellant seeks to put it on this appeal.
3. The explanation advanced by the appellant at trial was that he had not put the items in the bag. Someone else had done so and what he put forward as a possibility was that the person who was sitting next to him on the aeroplane may have been irritated by his getting up and

moving or, in any of those other ways in which people can irritate on aeroplanes and decided, therefore, maliciously, to pay him back by planting the life vest from under the appellant's seat into his hand baggage which was placed overhead in the locker above where they sat. It seems to me this appeal can be decided upon the consideration of whether or not such a scenario is fanciful or not. If it is not fanciful and it is a reasonable scenario, then I will allow the appeal but, in my judgment, that scenario is fanciful . I just simply do not believe it is on the cards as anything that may have happened in this case. It follows that the finding I make on the evidence before me is that the appellant put the life vest in the bag and, once he put that in there, Mr Ng concedes, very realistically, that it is almost impossible not to argue that thereby he was dishonestly taking it with the intention of permanently depriving the airline of it. In other words, he stole it.

4. Accordingly, the appeal is dismissed. (Peter Line) Deputy High Court Judge Ms Olivia Tsang, Government Counsel, of the Department of Justice, for the Respondent Mr Ken Ng Kin-man, instructed by Messrs Henry Wan & Yeung, for the Appellant PAGE - PAGE CT3/24.01.2007/MG HCMA630/2006/Reasons for judgment 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 9!AB 9!ABa\$ &`#\$ setup JUDGE.DOT setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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