

HONG KONG / JUDGMENT

HKSAR v. JOHN EDWARD BALL

COURT

Court of First Instance

DECIDED

23 May 2007

CASE / FILE NUMBER

HCMA1235/2006

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

bjbj HCMA1235/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.1235 OF 2006 (ON APPEAL FROM STV 77 OF 2006)

BETWEEN HKSAR Respondent and JOHN EDWARD BALL Appellant

Before : Deputy High Court Judge Longley in Court Date of Hearing : 15 May 2007 Date of Judgment : 23 May 2007

J U D G M E N T

AUTONUMOUT The appellant appeals against his conviction of an offence of driving in excess of the speed limit, contrary to section 41(1)(a) of the Road Traffic Ordinance, Cap.374, and the sentence of a fine of \$1,600 imposed in respect of that conviction. AUTONUMOUT It was alleged that the appellant had, on 26 November 2005, at 11:14 a.m., at Tate s Cairn Highway near Chainage 17.0 (Kowloon Bound), driven a private car displaying registration mark EF7199 on a road at a speed exceeding 80 kilometres per hour being the speed limit in force on that road, namely at a speed of 99 kilometres per hour. AUTONUMOUT The appellant s vehicle was detected to be speeding by a Traffic Radar Speed Meter which took a photograph of the defendant s vehicle (Exhibit P2) travelling in the outside lane of the highway and recorded his speed as 104 kilometres per hour. The allegation that the defendant was driving at 99 kilometres per hour is based upon police practice to deduct 5 kilometres per hour when a vehicle is found travelling over 100 kilometres per hour. AUTONUMOUT The appellant agreed to the admission in evidence of a notice signed by him admitting that he was the driver of the vehicle at the material time (Exhibit P3), a certificate indicating that he was the owner of the vehicle at the material time (Exhibit P4), a certificate indicating that the speed meter which had detected the speed of the

appellant's vehicle was accurate when it had been tested shortly before and shortly after the day in question (Exhibit P5) and an extract from the Government Gazette providing for a speed limit of 80 kilometres per hour on the relevant stretch of road (Exhibit P6). AUTONUMOUT The only oral evidence for the prosecution came from PC46430, an officer of the Enforcement and Control Unit (Traffic) of New Territories South. He gave evidence of having set up the radar device at 10:40 a.m. that morning and remaining with it until 11:40 a.m. at the completion of the operation. He did not actually observe the appellant's vehicle but was aware from certain printer paper that at 11:14 a.m. a vehicle had been detected by the radar device. He had subsequently delivered the roll of film from the device to a female colleague for developing. That film had contained the photograph (Exhibit P2) which indicated that the appellant's vehicle was travelling at a speed of 104 kilometres per hour. AUTONUMOUT When the appellant gave evidence he stated that two lorries had been travelling in front of him in the same lane, namely the lane next to the outside lane. He had been driving at 80 kilometres per hour when he saw clouds of dust in the air and pebbles apparently falling from the first of the two lorries. The lorry directly in front of his vehicle had dropped back into the third lane to avoid this falling debris. AUTONUMOUT Since debris from the first lorry was coming onto the bonnet of his car and stones were hitting his windscreen, one of which even caused a crack in the windscreen, he had accelerated into the outside lane in order to overtake the lorry and get in front of it and out of trouble. He said that he wanted to avoid an emergency and that he did not want his vehicle damaged or windscreen smashed. AUTONUMOUT After passing the lorry, he had then pulled back to the left. He said that the photograph (Exhibit P2), in which his car was clearly depicted travelling in the outside lane, showed him moving back to the left and looking towards that direction. In other words, he was saying that the camera had caught him at a moment after he had passed the lorry which was discharging the debris and before he had subsequently pulled back in front of that vehicle. I would only comment at this point that, in my view, it is unclear from the photograph in which direction the driver was looking and there is nothing apparent from the photograph of the appellant's car, either from the car's position in the outside lane, the direction in which it was travelling or from its indicator to suggest that it was about to move to the left out of the outside lane. AUTONUMOUT The Deputy Special Magistrate having heard the evidence, found PC46430 to be an honest and reliable witness. She did not believe the appellant. In particular she did not believe that the appellant had had to accelerate in order to get out of trouble. She convicted the appellant. AUTONUMOUT The appellant's grounds of appeal fall into three categories. AUTONUMOUT The first is based on a printed statement in English, dated 7 December 2005, signed by PC46430, which was produced in evidence as Exhibit P7 after the appellant had cross examined the officer as to its contents. Paragraph 4 of that statement stated, contrary to the officer's evidence in chief, that the officer had observed the vehicle travelling towards the radar and had himself formed the impression that it was travelling above 80 kilometres per hour. Paragraph 5 stated that the vehicle could not be stopped. The form of the statement was a pro forma printed one with gaps for entering details such as the location, the speed of the vehicle concerned and the service number of the officer involved. AUTONUMOUT The officer's evidence in court, when asked about this English statement, was that it was not prepared by him but by other member of his team and although he signed it he did not understand any English and

therefore did not understand paragraphs 4 and 5. AUTONUMOUT The appellant submits that he had been served with this document before the trial and had anticipated that the officer would give evidence in accordance with its contents. He therefore says that he anticipated that the officer would be able to corroborate his own account of the behaviour of other traffic at the material time. He submits that if he had known what the officer's evidence would be about the statement, he would have been well advised not to have agreed to the admission of Exhibits 6 and therefore would have been in a position to make a submission of no case to answer. He also says that the statement suggests that he evaded attempts to stop him. He further submits that he would have argued that the fact that the officer signed this statement without understanding its contents raised a doubt as to his truthfulness. He submits that this statement tainted the proceedings ab initio. AUTONUMOUT In so far as the appellant criticises as inappropriate the preparation of pro forma statements for signature by an officer in a language the officer does not understand, and the correctness of which he cannot verify, I agree with what the appellant says. I do not agree, however, that any injustice was caused in this case. The appellant is not suggesting that as a result of being served with this statement, he desisted from bringing to court other evidence which would have corroborated his account of the circumstances in which he exceeded the speed limit. He is not suggesting that it was a deliberate act on the part of the prosecution in so far as the statement is concerned to mislead him into consenting to the admission of Exhibits

6. Bearing in mind the nature of those exhibits there is nothing to suggest that the prosecution could not have easily proved their contents even if he had not consented to their production. The magistrate was made fully aware of the fact that no attempt had been made to stop the appellant at the scene. The appellant was not prevented from submitting that the fact the officer signed a statement that he did not understand affected his credibility on other matters. On the contrary in his final submissions the appellant praised the officer for being open and frank about this matter. AUTONUMOUT The magistrate was fully aware of the circumstances. She accepted the officer's evidence. She expressly stated that she attached no weight to Exhibit P7. AUTONUMOUT The second ground of appeal related to the conduct of the magistrate. The appellant suggests that she assumed the role of counsel in questioning him when he was giving his evidence in chief, thereby abandoning an impartial role in the proceedings. He submits that her questions amounted to cross examination and that he was put under stress and not permitted to give evidence in his own way. He also submits that as a result of the magistrate's questioning he was provided with no opportunity to produce, or thought it pointless to introduce, photographs that he had brought to court showing a crack to his car windscreen. AUTONUMOUT It is true that the magistrate elicited the appellant's account of what transpired that day in his evidence in chief by means of a series of questions posed to him in order to bring out his account. The appellant was appearing in person and there was nothing improper in the questions she put to him. A magistrate cannot perform his or her duties without obtaining the appellant's account of what had occurred in a clear and logical form that she could understand. That was all she was doing. Having read the transcript I am satisfied that it did not amount to cross examination. The appellant was not prevented from saying what he wanted to say. Indeed if it appeared that she misunderstood

what he was saying it is apparent that he was not in anyway inhibited from saying so. At the conclusion of his evidence chief the magistrate asked the appellant if he had anything further to say and he said that he had not. Indeed he invited her and prosecuting counsel to ask any further questions they wished. AUTONUMOUT There was nothing in the conduct to the magistrate that would have led an informed bystander to conclude that the appellant had not had a fair trial. AUTONUMOUT did not believe that it was as a result of anything in the conduct of the magistrate that led the appellant not producing photographs of the crack to the windscreen of his car at the trial. He gave evidence that there was a crack in his car windscreen and that he could bring his car to the court so the court could inspect it. If he did have the photographs with him it is surprising that he did not refer to them at this stage. Nonetheless there was no challenge to his evidence that, at least at the time of trial, there was a crack in his car windscreen. I do not consider that the production of photographs of the crack, which I allowed the appellant to produce in the appeal, would have assisted the magistrate one way or the other, bearing in mind the unchallenged oral evidence that she had received from the appellant about the existence of a crack in his windscreen.

AUTONUMOUT The appellant further attacks the finding of the magistrate that he was not an honest witness. An appeal court is always slow to upset a magistrate's finding as to credibility unless there is a clear indication that he or she may have erred. The magistrate had, as she stated in her Reasons For Verdict, heard all the evidence and observed the demeanour of the witnesses including the appellant of the trial. She had seen the photograph (Exhibit P2). She said this I did not find Appellant to be an honest witness. At the beginning of his evidence, Appellant said he had changed lane to avoid rubbish as other vehicles did. He also said he went to the right and into the overtaking lane. But later on Appellant said he was not conscious of lanes as it was an emergency. He could not say if he had changed lane when he went to the right and he did not know if he and the lorry that was spilling building debris were on the same lane when he was overtaking it. AUTONUMOUT The appellant submits that his latter answers were to explain that his motive was to avoid and escape from the hail of building debris hitting his vehicle, as opposed to a normal overtaking decision to pass the lorries in front of him in the second lane from the right. AUTONUMOUT I was not impressed by this submission. Having originally clearly stated that he had been in the lane next to the outside lane behind the two lorries and had subsequently moved into the outside lane in order to overtake the lorry discharging the debris, he had later said that he could not tell whether he went into a lane on the right. The magistrate then asked him Answer my question. Do you know whether you changed lanes when you went to the right? He answered I have no idea. Bearing in mind his earlier evidence that he had originally been in the lane next to the overtaking lane and had then turned to the right in order to avoid the debris and the fact that the photograph (P2) showed him clearly in the outside lane, this last answer, if his account had been correct, could not have been true. AUTONUMOUT would add that even if the magistrate had found the appellant's account credible, I would not have found that the appellant had a defence to the charge he faced. Necessity is a defence to a criminal charge with an extremely limited scope. It is available on a charge of speeding if the accused committed the offence in an endeavour to escape from

an immediate danger of death or great bodily harm but it is not available if the accused could have followed an alternative course which would not have involved committing the offence (Moss v. Howdle [1997] 782). AUTONUMOUT Leaving aside the question of whether the appellant would have believed there was an immediate danger or great bodily harm, on the evidence before the magistrate at the trial, which is what is relevant for the purpose of this appeal, there would have been no reason why the appellant could not have simply applied his brakes. There would rapidly have been no danger from the lorry which was discharging debris in view of the appellant s evidence that it was travelling at 80 kilometres per hour. On this appeal, in the course of his submissions, in answer to a question from the court the appellant maintained that there were vehicles behind him preventing him from braking but he admitted that he had looked to see that the outside lane was clear before proceeding into it in order to overtake the lorry. On that basis he could have moved into the outside lane and slowed his vehicle there. AUTONUMOUT find that the appellant was properly convicted of the charge. I find that the fine imposed by the magistrate was appropriate in the circumstances. AUTONUMOUT dismiss the appeal against conviction and sentence. (P.K.M. Longley) Deputy High Court Judge Mr Winston Chan, SGC (Ag.) of the Department of Justice, for the Respondent. The Appellant in person, present. PAGE - PAGE A B C D E F G H I J K L M N O P Q R S 1udk 1udk D E F G H I J K L M N O P Q R S T U V & ` # \$ % & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word 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=59166
CASE PAGE	https://chat.esheria.ai/case-law/hong-kong/hksar-v-john-edward-ball-2007

Prepared on 24 October 2026 · Esheria