

HONG KONG / JUDGMENT

HKSAR v. KWAN TAK CHEUNG

COURT

Court of First Instance

DECIDED

16 February 2007

CASE / FILE NUMBER

HCMA105/2007

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bjbj HCMA 105/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 105 OF 2007

HKSAR and KWAN Tak-cheung

Before: Hon Wright, J., in Court Date of Hearing: 16 February 2007 Date of Judgment: 16 February
2007

JUDGMENT

The appellant appeals his conviction after trial on a single charge of assault occasioning actual bodily harm. He further appeals of the sentence, a fine of \$750. It was the prosecution's case at trial that the appellant had assaulted his 20 year old daughter's 21 year old boyfriend. There was no disagreement at trial that the incident came about as a result of a dispute between the appellant and his daughter over her sleeping arrangements nor that the boyfriend intervened in that dispute. The nature of the injuries sustained by the appellant and the boyfriend were admitted by way of hospital medical reports produced by consent. The appellant's daughter and her boyfriend both testified that, during the dispute, the appellant had pushed the boyfriend to the floor and then leant over him and punched him in the head. The appellant, who was represented at trial, testified that when the boyfriend had intervened in the dispute he, the boyfriend, had made jabbing motion towards the appellant as a result of which the appellant, acting in effectively what he suggested was self defence, had pushed the boyfriend into a chair: the boyfriend then got up, pushed the appellant, they both fell to the floor a struggle ensued during which time the boyfriend was injured. As the magistrate correctly observed this was a matter which turned on the credibility of the witnesses. The magistrate had the advantage of seeing and hearing all of the witnesses. I do not. In a very careful statement of findings in which

he meticulously analysed the evidence, including the discrepancies in the evidence, he indicated that he accepted the evidence of the daughter and the boyfriend, rejecting that of the appellant. In particular he found that the appellant had acted "with hostility and anger". He did so because, the magistrate found, the appellant was upset by the lack of respect shown by his daughter. He found support, rightly so, for his conclusion in the fact that, such was the appellant's anger, after the incident the appellant's daughter, and her boyfriend and the appellant s 12-year-old son, who had also been present in the flat, had left the flat and waited downstairs in the lift lobby. On the evidence the magistrate was entitled to make the finding as to which witnesses he believed. Once he rejected the evidence of the accused but accepted the evidence of the prosecution witnesses conviction was inevitable. In regard to sentence, the appellant had two 25-year-old dissimilar convictions. The magistrate was satisfied that the incident arose from a domestic dispute which was unlikely to reoccur as the appellant now lives apart from his family members. This matter arose from the appellant s momentary loss of temper, perhaps understandable but not excusable or justifiable. He also found, correctly, that the injuries were at the bottom end of the scale. The imposition of a fine was entirely appropriate in the circumstances. Given the level of the appellant's earnings as disclosed to the magistrate, the fine imposed met the justice of the case. The appeal against both conviction and sentence is dismissed and the magistrate s orders confirmed. (A R WRIGHT) Judge of the Court of First Instance High Court Mr Raymond Cheng, Senior Government Counsel of the Department of Justice, for the HKSAR Appellant in person

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Prepared on 25 October 2026 · Esheria