

HONG KONG / JUDGMENT

HKSAR v. LAI TSAN KIN

COURT

Court of First Instance

DECIDED

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bjbj m}tug HCMA944/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 944 OF 2006 (ON APPEAL FROM ESCC 2202 OF 2006)

BETWEEN HKSAR Respondent and LAI TSAN KIN (_nst his conviction after trial on 13 September 2006 by Mr Joseph To of a single charge of possession of a dangerous drug, namely one tablet containing 0.14 g of methylenedioxymethamphetamine, contrary to section 8(1)(a) and (2) of the Dangerous Drugs Ordinance, Cap. 132, for which offence he was fined \$2,000. THE PROSECUTION CASE AUTONUMOUT In addition to matters adduced into evidence as admitted facts the prosecution called only one witness to give oral testimony. That witness, Police Constable 818, testified that he was present in police uniform inside the night-club, Tribeca, at the time that the lights in the premises were switched on, on the occasion of a police raid. He testified that, following the sudden turning on of the lights inside the night-club he had seen the appellant throw a plastic packet that he was holding in his right hand onto the floor. He recovered the packet and discovered that it contained a round blue tablet on which there was a star-shaped pattern. The appellant was arrested for the offence of possession of a dangerous drug but, after he had been cautioned, he denied that the packet was his or that he had thrown it to where it had been found. It was an admitted fact that on analysis by the Government chemist the tablet was found to contain the dangerous drug stipulated in the Particulars of Offence. THE DEFENCE CASE AUTONUMOUT The appellant gave evidence and called an eyewitness of some of the events that followed the arrival of the police party in the night-club. In a record of interview, taken in the early hours of the morning of 1 May 2006, the appellant had explained his oral denial that the packet was his or that he had thrown it to where it was found by asserting that, after he had been told by the police officer not to move on from the position he occupied on the dance floor, he had seen the police officer searched a nearby sofa, locate the plastic packet and accuse him of having thrown it there. The appellant denied that he had done so and challenged the officer If you don t believe me you can take the packet to have fingerprints tested. AUTONUMOUT David Pope, who was called as a witness for the defence, testified that he was together with the appellant together with a party of friends in the night-club that evening. At the time that the lights of the night-club

were switched on he was seated at a sofa with a friend. He saw that one and then a second police officer approached the appellant on the dance floor. When he and the friend seated next to him rose and made their way towards the appellant another police officer directed them to leave that area and go to another room. They did so. As he left he noticed a police officer making his way to the location of the sofa. AUTONUMOUT Further evidence was adduced through the admitted facts of the results of drug screening urine tests performed on the appellant on various dates in the period beginning 6 May 2006 up and until 1 September 2006. Those tests were negative for the presence of a range of dangerous drugs, including methylenedioxymethamphetamine. Finally, it was an admitted fact that in a letter of 4 May 2006 solicitors acting for the appellant had written to the police officer in charge of the case repeating the appellant's request for fingerprint tests to be performed on the plastic bag and, in addition, stating on behalf of the appellant that he was prepared to submit to the taking of buccal swabs, so that his DNA could be identified and tests performed to compare it with any genetic material found on the plastic bag. Those representing the Commissioner of Police had responded by indicating in letters of 25 May and 3 June 2006 respectively that at this stage of the investigation firstly, fingerprint and, secondly, DNA analysis and comparison would not be carried out. REASONS FOR VERDICT AUTONUMOUT Having recited the evidence at some length the magistrate embarked on an analysis of the evidence that led him to convict the appellant. He rejected the evidence of the appellant and his witness, Mr Pope. Of the former, he said that he rejected his evidence that he had backed away from the police officer onto the stage. To do so, so the magistrate found, the appellant would have had to back into and collide with pillars in the room that divided the seating area from the dance floor. Also, he rejected the appellant's evidence that he had observed a police officer searching the sofa for about 20 seconds before he located the plastic bag that he then alleged had been thrown to that place by the appellant, reasoning that if the police officer had done that as a step in framing the appellant that would have been visible in the lighting conditions to others in the night-club. Further, he noted that Mr Pope had made no mention of the search of the sofa by the police officer, although he had testified that he was seated on the sofa at the time that the lights were turned and it became apparent the uniformed police officers were present. He determined that Mr Pope's evidence that the police officer had yelled at the appellant and coerced him to move backwards onto the stage was coloured with prejudice, the appellant himself not having testified of such conduct. AUTONUMOUT In determining that PC818 was an honest and truthful witness, upon whose evidence he relied, the magistrate acknowledged that there was a discrepancy in the testimony of that police officer in that, at first, he had said that the appellant had discarded the packet containing the tablet, which had dropped onto the sofa, but later he corrected that testimony to assert that it had dropped onto the floor in front of the sofa. Of that conflicting testimony, the magistrate said (page 19, paragraphs 28 and 29 of the appeal bundle) 28. I did not consider this inconsistency material. Little turned upon exactly where the packet landed. According to the defence case, it had not been thrown down at all; it was in fact found in a gap between the seat backrest of the sofa.

29. The event that took place, forming the subject matter of the proceedings before this Court, occurred on 1 May 2006. It was probable that the officer had just made a mistake in recollecting where the drug landed. GROUNDS OF APPEAL AGAINST CONVICTION AUTONUMOUT By Ground 1 it is submitted that the prosecution's refusal to carry out examinations and analysis of the plastic packet, in which the dangerous drug had been found, for either or both fingerprints and traces of human bodily material from which DNA could be discerned and to conduct a comparison with the fingerprints and DNA of the appellant resulted in the denial of a fair trial to the appellant. AUTONUMOUT By Ground 2 it is said that the magistrate erred in failing to address adequately or at all the handicap to the defence in the conduct of the trial of the prosecution's refusal to carry out the requested examinations and comparison. AUTONUMOUT By Ground 3 it is said that the magistrate erred in misdirecting himself as to the true significance of the appellant's offer to provide fingerprints and DNA samples. AUTONUMOUT By Grounds 4 and 5 it is submitted that the magistrate erred in determining to reject the evidence of the appellant and that of Mr Pope respectively for the reasons set out in the Reasons for Verdict. AUTONUMOUT Finally, by Ground 6, as developed in oral argument, it was contended that the appellant's conviction was unsafe and unsatisfactory, having regard to the erroneous rejection of the testimony of the appellant and Mr Pope and having regard to the magistrate's stated reasons for accepting the testimony of PC818, notwithstanding inconsistencies in his evidence. SUBMISSIONS IN SUPPORT OF THE GROUNDS OF APPEAL AGAINST CONVICTION Grounds 1-3 (The absence of evidence of an examination of the plastic bag in which the tablet of the dangerous drug was found for fingerprints or DNA) AUTONUMOUT At the outset Mr Edwin Choy accepted that, following the indication from the prosecution in correspondence to the defence in May and early June 2006 that the prosecution were not going to examine the plastic bag for fingerprints or DNA, the defence had made no request for the supply of that bag so that they could have such tests performed for themselves in advance of trial. He informed the court candidly that consideration had been given to taking that course of action, but it had been determined not to do that on the basis of what it was estimated would be the likely cost. Furthermore, he accepted that no specific estimate of costs had been obtained by those instructing him from experts that might provide such services. AUTONUMOUT In support of his submissions under this heading Mr Choy argued that, whilst there was no general duties on the prosecution to obtain scientific analysis, of the kind sought in this case, in every case, the circumstances particular to the case of the appellant required the prosecution to take those steps in order to preserve the fairness of the trial of the appellant. The particular circumstance relied on by Mr Choy was the fact that not only was there no issue that the appellant had denied to the police officer on arrest that the packet was his or that he had thrown it but also in a record of interview held several hours after his arrest at Wanchai police station the appellant had challenged the police to examine the packet for fingerprints if they did not believe him. There was a controversy in evidence, between PC818 and the appellant, as to whether or not the appellant had issued the challenge in respect of fingerprints orally in the night-club on arrest. AUTONUMOUT From that challenge in respect of fingerprints Mr Choy submits arose a duty in the police to pursue that reasonable

line of inquiry. Failure to discharge that duty, so it is submitted, resulted in a denial to the appellant of his rights of equality of arms, as provided for by Article 11(2) of the Hong Kong Bill of Rights Ordinance, Cap.

- (2) In the determination of any criminal charge against him everyone shall be entitled to the following minimum guarantees, in full equality:
- (b) to have adequate time and facilities for the preparation of his defence AUTONUMOUT Furthermore, it is argued that the magistrate failed to have regard to the disadvantages to the defence flowing from the prosecution's failure to discharge their duties to pursue reasonable lines of enquiry by conducting the scientific examination of the plastic bag as requested. Finally, it is submitted that the magistrate failed to have regard to the fact that the repeated requests of the appellant that examination be conducted for fingerprints and DNA examination of the plastic bag is a matter that the magistrate ought to have had regard to in respect of the issue of the appellant's credibility, it being inherently unlikely that the appellant would have sought such an examination if he had retrieved the packet from his front jeans pocket with his right hand and discarded it in the manner described by PC818. Ground 4 (The magistrate's reasoning for the rejection of the testimony of the appellant) AUTONUMOUT Choy invites the court to note that the magistrate gave only two reasons for rejecting the denial of the appellant in evidence that the dangerous drugs were his or that he had thrown away the plastic bag in which the tablet was contained when the lights were turned on in the night-club. The magistrate said (page 20 of the appeal bundle, paragraphs 34-36)
34. According to the sketch in Exhibit D6B, the Appellant was initially on the dance floor. He said he backed onto the stage, but the sketch showed clearly that if he had backed onto the stage, he would have backed into and collided with the pillar.
35. The Appellant also said that the police officer searched the sofa and found the packet in some 20 seconds. That, according to the Appellant, would have been in full lighting, and also, in a position where others would have been able to see the officer clearly, able to see what he did clearly.
36. I did not accept that there could have been any truth in the allegation that the officer found the packet in the sofa with which to frame up the Appellant in those circumstances. AUTONUMOUT Mr Choy points out that nowhere in cross-examination was it suggested to the appellant that his description of his movements backwards from the policeman would have resulted in him colliding to the pillar. Similarly, there was no cross-examination of the appellant of his evidence that he had witnessed PC818 searching the sofa for 20 seconds. The appellant had given an account in his evidence-in-chief of PC818 walking up to him, telling him not to move and asking him if he had thrown something away, after which the officer had been joined by a second officer who had been asked by PC818 to keep an eye on the appellant, after which he had given the following description of events (transcript, page 32F-H) A. And then I saw that police officer no.1 walked to the sofa behind me. I then saw that he

looked at the area around the sofa on the floor. And then I saw that he checked the top of the seat of the sofa. And then I saw that he checked the top of the backrest of the sofa and behind the sofa I saw that he did this checking for twenty-something seconds. Q. And then? A. And then I saw that he stuck his fingers in between the backrest of the sofa and the seat of the sofa. Q. All right. And then what happened? A. Not long after, I saw that he took something out from this place. I did not see the object clearly but it seemed to be something like a plastic bag. Mr Choy submits that the reasons given by the magistrate were plainly insufficient as a basis for rejecting the testimony of the appellant. Ground 5 (The magistrate's reasoning for rejecting the evidence of Mr Pope) AUTONUMOUT Choy reminded the court that the magistrate gave two reasons for rejecting the evidence of the defence witness, Mr Pope (see page 21, paragraphs 37 and 38) 37. According to the Appellant, the officer searched the sofa for some 20 seconds almost immediately after his first confrontation with him, and Mr Pope was sitting on the sofa rather near where the officer would have searched it. If the Appellant was correct in his estimate there was no reason to doubt his estimate on this that the officer did use around 20 seconds to search the sofa and find the drug there in that time, it would have been done in full view of Mr Pope.

38. Further, Mr Pope's evidence was clearly coloured with prejudice. Nowhere in the Appellant's evidence was it alleged the officer yelled at the Appellant, and that the police officer coerced him to back onto the stage. The Appellant himself said that he backed subconsciously onto the platform. It made a world of difference between a person backing onto a stage subconsciously and a person being coerced to walk backward onto a stage. AUTONUMOUT Choy drew the attention of the court to the transcript of the evidence of Mr Pope from which it is clear that Mr Pope was not present with the appellant for much of his dealings with the police. Mr Pope testified that, having been present and having witnessed the initial confrontation between one police officer and the appellant, the movement backwards and upwards of the appellant to the raised area at which Mr Pope said that he was seated on a sofa and that following the arrival of a second police officer next to the appellant he and a friend, with whom he was seated, and risen from the sofa (transcript, page N-S) A. And then basically what happened was that the second policeman stood with Andrew. Gary and I got up. We walked towards the two policemen and then the first policeman told us to go off into another room. So he basically told us in English to head off to our left. And then there were other police on the dance-floor. And then the policemen directed us to another room. And then as we moved off, I---as I was going around, I turned and I saw the first policeman walking towards the back of the sofa lounge area and then that was that. We were pushed into another room. So that was it. Q. You didn't see any more after that? A. No, no. AUTONUMOUT Choy submits that, although the magistrate did not articulate the matter in terms, it is to be inferred from his analysis that the absence of evidence from Mr Pope of the police officer's search of the sofa on which he was sitting is not only inconsistent with the appellant's evidence but also something which he would necessarily have witnessed. He submits that the evidence from the appellant and Mr Pope is not mutually inconsistent. He points out that Mr Pope's account clearly encompasses only initial events and, in particular,

he points out that it was his evidence that his last view of the appellant and the two police officers, as he left the area, was of the first police officer walking towards the back of the sofa lounge area. Once again he invites the court note that this evidence was not challenged in cross-examination. AUTONUMOUT Of the magistrate s finding that Mr Pope s evidence was clearly coloured with prejudice Choy submits that on a proper examination of the transcript of Mr Pope s evidence there is clearly an insufficient evidence foundation for such a finding. He suggests that Mr Pope made it quite clear that he did not understand what was being said in Cantonese by the police officer and that, in effect, as a result he was drawing speculative inferences and thereby placing his own characterisation on events. Ground 6

AUTONUMOUT At the invitation of court under this umbrella ground of appeal, namely that the conviction was unsafe and unsatisfactory, Mr Choy submitted that the magistrate erred in determining that the inconsistency in the testimony of PC818 as to the place to which he had seen the appellant throw the packet containing the tablet of dangerous drugs was not material, in particular that Little turned on where exactly the packet landed AUTONUMOUT Choy pointed out that initially PC818 said that he had seen the appellant remove his right hand from his right front trouser pocket of his jeans, after which he had noticed that the appellant held a plastic packet between the fingers of that hand which he discarded to his left. At first, the officer s testimony of what had become of the plastic packet was which was then dropped onto the sofa next to him (transcript, page 2D). A little while later, having been asked twice if anyone was sitting on the sofa on which the packet had landed, PC818 corrected his testimony and said I apologise. It was dropped to the floor in front of the sofa.

AUTONUMOUT Choy submits that the inconsistency was of some importance : the first version of the police officer s evidence, namely that packet was on the sofa was consistent with the appellant s evidence in chief that it was from the sofa that the packet had been located by the police officer. THE SUBMISSIONS OF THE RESPONDENT Grounds 1-3

AUTONUMOUT Wong submits on behalf of the respondent that none of the complaints made on behalf of the appellant, arising from the fact that the police officers investigating the case against the appellant did not cause an examination or analysis to be made to determine whether or not the appellant s fingerprints or bodily materials identified by DNA analysis were on the packet in which the tablet of dangerous drugs was contained, is made out. She points out that the defence was advised by letters of 25 May and 3 June 2006 that the police were not going to conduct examinations for fingerprints and the presence of DNA respectively. Accordingly, so she submits, the defence were advised of the stance of the prosecution within about one month of the appellant s arrest and at least three months before the commencement of trial of the prosecution position, and had ample time in which to request to be provided with the plastic packet and to make their own examination and analysis of it, if they so chose. That they chose not to do so was entirely a matter for the defence, but in consequence it was not open to them now to make complaint.

AUTONUMOUT Wong submits that there was no duty on the prosecution to cause a fingerprint or DNA analysis of the plastic packet to be made. Furthermore, she points to the repeated references by the magistrate in the Statement of Findings that evidence the fact that he was aware of and gave consideration to the evidence of the denials of possession of

the drug by the appellant in his responses on arrest and under interview by the police later and, in particular, his challenge to the police to have the packet tested for fingerprints.

Ground 4 (The magistrate's reasons for rejecting the testimony of the appellant)

AUTONUMOUT Wong submits that, in light of the position on the sketch, Exhibit D6A, that the appellant marked as being where he was when first confronted by the police officer and the position to which he moved backwards, the magistrate was entitled to determine that he could only do so if he bumped into or collided with the pillar. AUTONUMOUT Of the magistrate's reference to the appellant's testimony that PC818 searched the sofa for about 20 seconds or so, in the context of his having determined to reject the appellant's evidence, Ms Wong submits that is to be understood as the magistrate viewing such evidence as being a blatant attempt to frame the appellant and not something that it is inherently likely a police officer would have done in front of a well lit crowded room of people. Ground 5 (The magistrate's reasons for rejecting the testimony of Mr Pope) AUTONUMOUT Wong submits that the magistrate was entitled to attach weight to the fact that Mr Pope gave no testimony of having witnessed a search of the sofa by a police officer, it having been Mr Pope's evidence that he had been sitting on the very sofa, albeit at the far end, at the outset of events and that he had witnessed the appellant being confronted in sequence by two police officers. She submits that the appellant's evidence of the sequence of events suggests that the search took place soon after he had been confronted by the police officer.

AUTONUMOUT Similarly, Ms Wong submits that the magistrate was entitled to have regard to what she suggests was the inconsistency between the evidence of the appellant and that of the appellant in respect of the behaviour of PC818 towards him, particularly the level of voice used towards him. A CONSIDERATION OF THE SUBMISSIONS Grounds 1-3

AUTONUMOUT In my judgment the short answer to the issues canvassed under these grounds of appeal is that there was no duty on the prosecution to conduct the analysis and examination of the plastic packets sought by the defence and that the fairness of the appellant's trial was not impugned by their failure to do so. Clearly, those representing the appellant were aware of the steps they could have taken, if they so wished, to have had the plastic packet examined by experts on behalf of the defence, following the correspondence in which the prosecution indicated that they were not prepared to conduct such examinations. As Mr Choy very properly conceded in oral argument the defence were made aware of the stance taken by the prosecution timeously and determined not to take such steps on grounds of the assumed costs. In that context, it is to be noted that in these proceedings the appellant is represented by counsel, instructed by the solicitors who represented him at his trial. AUTONUMOUT That the magistrate took into account the relevance to the defence case of the applicant's denials to the police and his challenge to have the packet tested for fingerprints is evidenced by his statements at paragraph 25 of the Statement of Facts

25. In assessing his response given to the arresting officer at the scene, and also what he said at the cautioned interview, I must bear clearly in mind that a person of such good character was less likely to commit an offence, and was more likely to have told the truth. There is no

merit in these grounds of appeal against conviction. Grounds 4 and 5 AUTONUMOUT In approaching the task of analyzing the evidence the magistrate stated at the outset that he was aware that he was dealing with a defendant who was of clear record and of clear positive good character (page 18, paragraph 24 of the appeal bundle). Part of the evidence adduced at trial had been that the appellant had retired from the Hong Kong Police Force as a senior police constable, having served from 1979 to 2000 and having been awarded both the Colonial and Police Long Service Medals in 1997. The description of his performance in his last five years service had been very good . Of course, the magistrate went on to state that evidence was relevant to the twin issues of the appellant credibility and his lack of propensity to commit the offence AUTONUMOUT As set out earlier, in the submissions of counsel, the magistrate gave two reasons for rejecting the evidence of the appellant, notwithstanding his stated approach to his credibility having regard to his positively good character. Firstly, he referred to the appellant s evidence that he had moved backwards having been confronted by PC818 from the dance floor onto the raised platform on which the sofa was located nearby. Of that, he said if he had backed onto the stage he would have backed into and collided with the pillar. AUTONUMOUT It is difficult to understand why the magistrate ascribed such importance to this piece of evidence. Certainly, it had formed no part whatsoever of the cross-examination of the appellant nor was it raised with him otherwise. Accordingly, the appellant was never given an opportunity to deal with the issue in evidence. Of itself, and having had the benefit of reading the entire transcript of the evidence led at trial it appears to be a banal reason to advance as the first articulated reason to disbelieve the testimony of a mature man possessed of positive character. AUTONUMOUT The second reason advanced by the magistrate for disbelieving the testimony of the appellant was his evidence that PC818 had searched the sofa for some 20 seconds, after which he had found the packet containing the tablet of dangerous drugs. Clearly, the magistrate viewed this evidence as being conduct that onlookers would have viewed as being a framing of the appellant done in full public view. AUTONUMOUT In the first place, given that it was the evidence of PC818 that he had located the discarded plastic packet in front of sofa it is difficult to understand why the magistrate should have reached the view, that he clearly did, that a search of the sofa somehow was and would have been viewed by onlookers as the police officer framing the appellant. In the second place, and of importance, it is to be noted that PC818 accepted in cross-examination that he did search part of the sofa (transcript, page 26E-V) Q. In examination-in-chief, you said initially that you found, well, that they were dropped onto the sofa, the drugs. Can I suggest to you that you in fact searched on the sofa putting your hand between the cushions? A. My hand placed in between the cushions? After it was established that the question referred to the place at which the back of the sofa met the seat of the sofa PC818 replied A. I saw that he dropped it there and, at the end, when it was found, it was lying a little in front of the sofa. I did check this part in between the backrest and the seat of the sofa. I did not check the whole of the sofa. I restricted my search to the area where this packet was dropped. Ground 6 (The significance of the inconsistencies in the testimony of PC818) AUTONUMOUT As described earlier PC818 had given two different accounts of where it was that the plastic packet

discarded by the appellant had dropped, at first he had said on the sofa and secondly, on the floor next to the sofa. The magistrate addressed that issue, finding that it was probable that, given it was four months since the events, the police officer had simply made a mistake about the location. He went on to note that the police officer had corrected himself without prompting. However, that observation has to be viewed in the context, referred to earlier, that it came after the officer had been asked twice whether there was anyone sitting on the sofa on which the plastic bag landed. The officer's correction came in direct response to the second of those two questions, one posed by the court itself. In the defence case both the appellant and Mr Pope testified that Mr Pope and their mutual friend, Gary, were sitting on a sofa behind and to the left-hand side of where the appellant was confronted by the police officer (Exhibits D6A-C, pages 54-6 of the Appeal bundle).

AUTONOMOUT In my judgment that there is force in Mr Choy's submission that the magistrate erred in determining of the inconsistency of PC818's evidence in this regard that Little turned on exactly where the packet landed. Clearly, the significance was that it was the defence case, put in cross-examination to PC818 and supported by the testimony of the appellant, that the plastic packet had been found on the sofa not on the floor. Furthermore, the evidence of PC818, referred to earlier, that he had searched part of the sofa added to the significance of that inconsistency. Whilst the magistrate was, of course, correct to say that it was the defence case that the appellant had thrown nothing at all the inconsistency remained of significance.

CONCLUSIONS AUTONOMOUT In my judgment, the reasons given by the magistrate for disbelieving the evidence of the appellant were clearly insufficient to reject the testimony of the appellant, in particular given that he was a mature man of positively good character. The primary reason advanced, namely that in moving backwards in response to the advancing police officer the appellant would have collided with a pillar, a matter not even canvassed in cross-examination with the appellant, is wholly insubstantial. Similarly, the appellant's evidence that PC818 searched the sofa is a matter that PC818 confirmed in his own evidence.

AUTONOMOUT Furthermore, in my judgment the magistrate erred in the weight that he gave in his consideration of the inconsistencies in the testimony of PC818 packet of dangerous drugs had landed. The issue of whether or not the packet of dangerous drugs had been found on the sofa went to the heart of the defence case.

AUTONOMOUT Given the concerns that I have expressed about the magistrate's assessment of the evidence of PC818 and that of the appellant it is not necessary to deal specifically with his assessment of Mr Pope's evidence, save to say that in my judgment that evidence cannot be categorised as necessarily in conflict with the evidence of the appellant in respect of the sequence of events, in particular that if PC818 searched the sofa then Mr Pope would have seen that search. After all, it was PC818's evidence that he did search part of the sofa.

AUTONOMOUT I am mindful of the statement in the judgment of Bokhary PJ, with whom all the other judges agreed, in Chou Shih Bin [2005] 8 HKCFAR 70 at 78 E-F as to the appropriate approach of an appellate judge in an appeal under section 113 of the Magistrates Ordinance, Cap. 227, which appeals are by way of re-hearing. Where the facts are concerned, the appellate tribunal will recognise that it does not enjoy the advantage of having received the evidence at first hand which the magistrate enjoyed. Even so, it will not fail to quash a conviction that it considers

unsafe. AUTONUMOUT In the result, for the reasons set out above in my judgment the appellant s conviction is unsafe and I order that it be quashed and the sentence set aside. (Michael Lunn) Judge of the Court of First Instance High Court Ms Wong Sze Lai, Lily, SGC, of the Department of Justice, for the Respondent Mr Edwin Choy, instructed by Messrs Haldanes, for the Appellant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ 15.|~ 15.| & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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