

HONG KONG / JUDGMENT

HKSAR v. LAM TSZ-HO

[2022] HKCA 425

COURT

Court of Appeal

DECIDED

14 March 2022

CASE / FILE NUMBER

CACC121/2021

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bjbj CACC 121/2021

[2022] HKCA 425 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF APPEAL CRIMINAL APPEAL NO 121 OF 2021 (ON APPEAL FROM
HCCC NO 26 OF 2020)

HKSAR Respondent v LAM Tsz-ho Applicant

Before: Hon Zervos JA in Chambers Date of Judgment: 14 March 2022

J U D G M E N T

On 8 June 2021, following a trial before Wong J (the judge) and a jury the applicant was unanimously convicted of trafficking in a dangerous drug and sentenced to 26 years imprisonment. The applicant now applies for leave to appeal against his conviction. There is no objection from the respondent to the application being determined on the papers without a formal hearing. The applicant's grounds of appeal read as follows:

- (1) The strong and inappropriate remarks in the summing-up given by the Trial Judge namely, If you do not follow any of my directions, it may amount to contempt of court, which is a criminal offence. And as I have told you earlier, if you do not follow my directions, your verdict will be set aside by the Appeal Court and your efforts will be wasted. , amount to a form of pressure and threat upon the jury in the evaluation process of the verdict which deprived the Applicant of a fair trial; and

- (2) In all the circumstances of the case and the Applicant, the conviction is unsafe and unsatisfactory. Having considered the written submissions of the parties, I am persuaded that leave should be granted to the applicant to appeal against his conviction on the grounds he has advanced. These are my brief reasons for doing so. The applicant attended a post office and collected a parcel that was found to contain dangerous drugs. The applicant claimed he collected the parcel on the instructions of a friend and did not know it contained dangerous drugs. Hence, the key issue at trial was whether the applicant knew the parcel contained the dangerous drugs. The applicant argues that the impugned remarks amounted to a form of pressure and threat to the jury in its evaluative process of the evidence in reaching a verdict, which deprived the applicant of a fair trial: HKSAR v Tam King Hon (2006) 9 HKCFAR 206, at [36]. The respondent argues the contrary, and relies on the decision of the Court of Appeal in HKSAR v Chan Huandai [2016] 2 HKLRD 384, at [45] [52], which was in the context of jurors in a retrial having accessed the internet about the case. Reliance is also placed on decisions from the United Kingdom, Australia and Canada of a similar nature in that they address the possible liability for contempt of court by jurors for breach of a direction not to seek and rely on extraneous materials. See AG v Dallas [2012] 1 WLR 991; Dallas v United Kingdom (2016) 63 EHRR 663; AG v Davey & AG v Beard [2014] 1 Cr App R 1; Her Majesty s Solicitor General v Stoddart [2017] EWHC 1361; Registrar of the Supreme Court of South Australia v S & C (2016) 125 SASR 207 and R v Bains 328 CCC (3d) 149. In my view, there is a valid argument as to whether the judge s impugned remarks were accurate and appropriate, and whether they constituted a material irregularity. I am satisfied that the grounds of appeal are reasonably arguable and leave is granted to the applicant to appeal against his conviction. (Kevin Zervos) Justice of Appeal Mr Raymond Cheng, SADPP, and Mr Raymond HM Chan, PP, of Department of Justice, for the respondent Mr James Tze, instructed by CMK Lawyers, assigned by Director of Legal Aid, for the applicant PAGE
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