

HONG KONG / JUDGMENT

HKSAR v. LAM YUI YIU

COURT

Court of Appeal

DECIDED

15 June 2007

CASE / FILE NUMBER

CACC373/2006

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Before: Hon Stuart-Moore VP and Beeson J Date of Hearing: 15 June 2007 Date of Judgment: 15 June 2007 J U D G M E N T Stuart-Moore, macrobutton nomacro VP (giving the judgment of the Court): On 17 August 2006, the appellant was found guilty of dishonestly receiving a stolen taxi bearing the registration number JW 8751, knowing or believing the same to be stolen goods, contrary to section 24 of the Theft Ordinance, Cap. 210. This followed a trial before Deputy District Judge S M Sham. The sentence of 4 years imprisonment which was imposed on the appellant on the following day is now the subject of an appeal, leave having been granted by me on 27 March 2007. The facts were simple. A taxi, registration number JW 8751, was leased out to the appellant from 11 May 2004 to 2 June 2004. Some nine months later, on 15 March 2005, taxi JW 8751 was found to be missing from the place where it had been left parked in Tung Choi Street, Mongkok. In the same month, the vehicle licence of a taxi, number KM 2638, belonging to a taxi leasing company, also disappeared. On 23 March 2005, PW1 rented taxi KM 2638 from the leasing company. While driving this taxi in Shatin, by sheer coincidence he came across another taxi bearing exactly the same registration number. He made a report to the police. Again, on 3 April 2005, while driving in Kowloon, PW1 noticed a stationary taxi with the number KM 2638. He could see that it was not the same taxi with that number which he had earlier rented so, once more, he reported what he had seen to the police. In due course, the appellant returned to the taxi bearing the number KM 2638 and he was arrested. Several documents relating to taxi JW 8751 were found in the glove compartment. The appellant's explanation for his possession of the taxi was rejected. In short, the appellant had been driving the taxi, stolen in Mongkok on 15 March 2005, which had now been fitted with false plates to match the vehicle licence stolen in that same month. The judge found that the appellant's culpability in relation to handling the taxi was no less than if he had been the thief. Noting that the appellant was not insured to drive the taxi and that any driving offence committed by the appellant might well be blamed on the driver of the taxi bearing the genuine number plate KM 2638, the judge considered that a deterrent sentence was necessary. The sentence of 4 years imprisonment was imposed in the absence of any guidelines in respect of handling stolen goods, each case depending entirely on its own facts.

In this case, the taxi was stolen so that it could be used as a regular taxi plying for hire on public streets. As the judge rightly found, the offence had been well prepared and planned with the added element that the appellant would be able to avoid detection for any traffic offence, given that there existed a genuine taxi bearing the same number plate unless, as happened in this case, he was caught red-handed. We bear in mind, as the judge was also right to observe in the instant case, that this was an offence which had potential dangers for the public as the stolen taxi was not covered by insurance. The appellant, who is no stranger to the courts but to his credit is someone who has managed apparently to steer clear of trouble for many years, was able to advance very little in mitigation and nothing which could materially reduce his sentence. During today's hearing, the appellant drew to our attention the fact that a defendant was sentenced in Eastern Magistrates Court in ESCC 315/2007 to a total of 16 months imprisonment for stealing a taxi as well as related traffic offences for which he was also disqualified from driving for 18 months. We have checked the appellant's information which has turned out to be entirely accurate. We note that the Eastern Magistracy case was dealt with as a plea of guilty and also that it appears the defendant in that case was apparently suffering from nasal cancer. Whatever may be the case, the defendant in ESCC 315/2007 was extremely fortunate to have been dealt with so leniently. The question for us to decide is whether a sentence of 4 years imprisonment after trial should be regarded as manifestly excessive on the facts now before us. The fact that another defendant in unrelated proceedings was sentenced inappropriately is unfortunate but it is not a matter which can affect our judgment in this case. If it did, it would be tantamount to saying that two wrongs make a right. Ms Chan, for the respondent, was unable to say why the other case was dealt with in the magistracy while the instant case was heard in the District Court but she hazarded a guess, which may well be correct, that this may have been because the police had proceeded, as they are apparently entitled to do in straightforward cases in the magistracy, without first taking advice from the Department of Justice. We have had our attention drawn to the decision of this court in HKSAR v Wong Kam-tat CACC 446/2001 which was concerned with the handling of a stolen Honda Civic motor car by a motor dealer who sold the vehicle for \$46,000. The defendant in that case pleaded guilty to the charge and to two closely connected charges of forgery, namely a notice of transfer of ownership and an application to retain a vehicle registration mark. The sentencing judge adopted a starting point for the handling charge of 4 years imprisonment. It was submitted that this was too high but Stock JA, giving the judgment of the court, said: we have been taken to a series of handling cases including cases of handling stolen vehicles. One of the cases we have studied was Cheng Chun Ming CACC 356 of 2000 in which the Court of Appeal said that: Cases involving the theft or handling of motor cars are very serious offences and inevitably call for immediate custodial sentences of considerable length. This is absolutely necessary to act as a deterrent to a prevalent crime. That is a sentiment which is not restricted to the export of cars, although the export or intended export of stolen vehicles will be an aggravating factor.

10. Whilst it is true that this was not a case of a luxury car, nor a case of stealing or handling a car to export across the border and whilst it was a case which involved but one vehicle, what is a serious aggravating factor in this case is that the applicant was a motor dealer. The judge rightly commented that: Motor dealers who act in his fashion provide a ready market for

disposal of stolen cars by mixing stolen vehicles in amongst genuine stock. This is quite different from the case, say, of someone who is merely employed to deliver a vehicle, which he knows to be stolen, to the buyer or to a middle man. This was a dealer using his know-how in the trade to fool an innocent buyer, and to behave as proactively in the whole affair as a handler could. And, then, to add insult to injury he sought to gain further by demanding a profit when the fooled buyer was confronted with the fact that all was not well with the purchase. The cases to which we have been referred do not really assist this applicant. Facts differ, and each case has its own aura, and its own facts, and this is an unusual case on its facts. In our judgment, a starting point of four years imprisonment for the handling offence was not too high, certainly not manifestly so. Different considerations which we have set out apply to the present case but we are satisfied that the facts of this offence disclose a sufficiently serious state of affairs to have justified the sentence which the judge imposed. The sentence was at the top end of the range but we do not consider that it was manifestly excessive. Accordingly, the appeal is dismissed. (M. Stuart-Moore) macrobutton nomacro Vice-President (C-M Beeson) Judge of the Court of First Instance Ms Grace Chan, SGC, of the Department of Justice, for the Respondent. The Appellant, in person. PAGE - PAGE - 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 1udk 1udk 1udk R S T U V "0 "0 i\$&`G Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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