

HONG KONG / JUDGMENT

HKSAR v. LEE KWAN YIN AND ANOTHER

COURT

Court of First Instance

DECIDED

28 January 2003

CASE / FILE NUMBER

HCMA693/2002

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bjbj HCMA693/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.693 OF 2002 (ON APPEAL FROM STCC 345 OF 2002)

BETWEEN HKSAR Respondent and LEE KWAN YIN 1st Appellant HUI KUN LUN 2nd Appellant

Before : Hon Gall J in Court Dates of Hearing : 6 November 2002 and 28 January 2003 Date of Judgment : 28 January 2003

J U D G M E N T

AUTONUMOUT The appellants were convicted on 28 May 2002 of attempting to obtain pecuniary advantage by deception, and were sentenced on 11 June 2002 to a period of four months imprisonment. Each of them now appeals both the conviction and the sentence. AUTONUMOUT The trial was before Ms L.K. Loh, a magistrate at Shatin, the 1st appellant was in person and the 2nd appellant was represented by a counsel instructed by the Duty Lawyer Service.

AUTONUMOUT I do not propose to deal with the grounds set out by Ms Panesar and Mr Che in respect of their opposition to the convictions. There is one matter which causes me grave concern. The 1st appellant in the court below being unrepresented, it was incumbent upon the magistrate to inform him of his rights in respect of the manner of the conduct of his case and his rights, options and elections at the time when a case to answer had been found against him. The normal course would be for the magistrate at the appropriate time to deliver the proper instruction to him. What happened in this case was that when the point was reached that such a direction was necessary, the magistrate directed the interpreter to address the 1st appellant in respect of these matters. The interpreter did so using his own knowledge and his own words without contribution by the magistrate and without the magistrate confirming the direction to be

correct. AUTONUMOUT Three directions were given by the interpreter without any assistance from the magistrate. The first dealt with cross examination; the second, a first instruction as to whether or not the 1st appellant should give evidence; and a further instruction on the same matter. AUTONUMOUT I had in the first instance considered the interpreter may have been reading from a prepared script given to him by the magistrate being what the magistrate would have said had she said it herself. However, the two directions given to the 1st appellant on his rights, options and elections to give evidence or not to give evidence and the consequences that flow from those decisions are different, and therefore a script could not have been used. The first accused would have been left in a position of not knowing which of the two directions was the appropriate one, and in any event both are inadequate. This is a situation which ought not arise. The magistrate should not leave it to an interpreter to give such direction as he sees fit to the parties on matters of law, particularly matters affecting the rights of an accused. The court prosecutor and counsel should both have intervened and brought to the attention of the magistrate that such a direction by an interpreter is unsafe, unsatisfactory and improper. Neither of them did so. AUTONUMOUT Justice must not only be done, but must be seen to be done. Where a magistrate leaves part of her duties to an interpreter, justice is not done. AUTONUMOUT The 2nd appellant was represented at the hearing below. Having been told by his counsel of his rights, options and elections, at the no case to answer stage would then have heard what was said to the 1st appellant, and may well have been in some doubt as to the accuracy of what he had been told by his counsel. He was left with what his counsel told him and two other versions to consider. This is a wholly unsatisfactory situation. AUTONUMOUT This appeal is allowed and the conviction is set aside. There will be no retrial. (T.M. Gall) Judge of the Court of First Instance High Court Ms Lynda Shine, SGC of Department of Justice, for the Respondent/HKSAR Ms M. Panesar, instructed by Messrs Peter Cheung & Co., for the 1st Appellant Mr Allan Che of Messrs Wong, Hui & Co., for the 2nd 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 &`#\$ & 6" CACV Jeannie MY MokSo ABC.dot setup Microsoft Word 9.0 Judiciary CACV Title Microsoft Word Document MSWordDoc Word.Document.8

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