

HONG KONG / JUDGMENT

HKSAR v. LEUNG CHIU NGAI

COURT

Court of First Instance

DECIDED

24 January 2007

CASE / FILE NUMBER

HCMA962/2006

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bjbj HCMA962/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 962 OF 2006 (ON APPEAL FROM KTCC 3499 OF 2006)

BETWEEN HKSAR Respondent and LEUNG CHIU NGAI (nt was convicted after trial of an offence of common assault, contrary to common law. He was fined \$1,500 and appeals both his conviction and sentence. AUTONUMOUT The prosecution case was that during a game of chess in a public playground in Sham Shui Po, the appellant get involved in an argument with his chess opponent and struck him. The appellant then left. A few days later the victim saw the appellant in the street and called the police who arrived and took both the victim and the appellant to the police station for enquiry. Subsequently the appellant was charged with the offence. AUTONUMOUT The appellant appeals his conviction on the basis of the general grounds contained in Form 101, i.e. the evidence before the magistrate was not capable of founding a conviction. He additionally makes complaint of matters concerning his own written statement not being produced in evidence. No compliant however can be made of that latter matter. It was effectively a hand written self-serving statement prepared by the appellant to support his own case. AUTONUMOUT As to the appellant s general grounds of appeal, the victim and the appellant gave different versions of what happened before the magistrate. The victim s version accorded with the prosecution case. The appellant on the other hand said that the victim had struck him and that he had then struck the victim. AUTONUMOUT The magistrate in his oral verdict (adopted as his Reasons for Findings) said this do reject the defendant s testimony, though I wish to add that even if I accepted his testimony as truthful, he has made admissions in the course of testifying that are tantamount to assault. I am referring specifically to his testimony that he punched PW1 [the victim] in anger after being slapped by PW1. That is an admission tantamount to an assault. I accept PW1 s testimony. I accept the testimony also of PW2 [the arresting officer] that the defendant stated under caution and I am satisfied that it was stated voluntarily that he had assaulted PW1 with fists and kicks, and that PW1 had slapped him once. I find that the defendant and PW1 played Chinese chess with one another through the night. This ended in acrimony. The defendant used his fist to punch PW1 on his head and body. AUTONUMOUT

Findings of fact based upon the creditability of witnesses are matters which magistrate are in a much better position to decide than an appellate court. In the present case the magistrate s findings were reasoned and logical. There is no basis to go behind them or the verdict based upon them. AUTONUMOUT The appeal against conviction is dismissed. AUTONUMOUT The appellant says the fine of \$1,500 was too severe. Although the appellant had previous minor similar convictions they were more than 20 years old and the magistrate properly disregarded them. AUTONUMOUT In my judgment a fine of the level imposed by the magistrate was an appropriate sentence for a dispute arising out of a game of chess and a fight which resulted from that dispute. The appeal in regard to sentence is also dismissed. (M.A. McMahon) Judge of the Court of First Instance, High Court Ms Rosaline S.Y. Leung SGC, of the Department of Justice, for HKSAR 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 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title &/=D &/=D &/=D Microsoft Word Document MSWordDoc Word.Document.8

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