

HONG KONG / JUDGMENT

HKSAR v. LI KWOK HO

COURT

Court of Appeal

DECIDED

28 August 2007

CASE / FILE NUMBER

CACC253/2006

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bjbj CACC 253/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO. 253 OF 2006 (ON APPEAL FROM DCCC NO. 55 OF 2006)

BETWEEN HKSAR Respondent and LI KWOK HO Applicant

Before : Hon Stuart Moore VP, Tang VP and Hartmann J in Court Date of Hearing : 28 August 2007
Date of Judgment : 28 August 2007

J U D G M E N T

Hon Hartmann J (giving the judgment of the Court) : AUTONUMOUT On 12 June 2006, after a trial in the District Court before Deputy District Judge Anthony Kwok, the applicant was found guilty of handling a stolen motor vehicle, knowing or believing it to be stolen, contrary to section 24 of the Theft Ordinance, Cap.210. On 26 June 2006, the applicant was sentenced to four years imprisonment for the offence. He has now sought leave to appeal against both his conviction and the sentence. AUTONUMOUT It was never disputed that the motor vehicle in question, a white coloured Honda Accord, had been stolen nor that the applicant had dealt with it. AUTONUMOUT The evidence at trial showed that, after the vehicle had been stolen, it had been altered so that its identifying features engine and chassis numbers and the like had been made to match those of another vehicle of the same make and model which had earlier been damaged in an accident and which had been sold by its owner for scrap. In England, this operation of cannibalising a lawfully acquired but damaged car in order to disguise a much more valuable stolen car of the same make and model is called ringing AUTONUMOUT It was the applicant's case at trial that he had had nothing to do with the ringing operation. As a private dealer in motor vehicles, he had purchased the white-coloured Honda Accord in good faith after he had examined it in order to sell it on, if

possible, for a profit. He had purchased the car for cash from a person whom he believed to be another trader or agent. He had registered the car in his own name and after that had advertised it for sale. In summary, it was his case that he was himself an innocent purchaser of a stolen (and altered) vehicle. AUTONUMOUT The applicant chose not to testify at trial. However, at the time of his arrest in early May 2005 he had made a cautioned statement and this was admitted into evidence by consent. AUTONUMOUT The evidence presented by the prosecution at trial was entirely circumstantial. However, after a detailed analysis of the various features of that evidence, the trial judge was satisfied that their cumulative effect resulted in an irresistible inference having to be drawn that, at the time when he dealt with the stolen vehicle, the applicant knew or believed it to be stolen. The judge expressed his conclusion in the following terms Each of the above features, standing alone, may not be sufficient to give rise to any inference of knowledge, let alone the only irresistible inference of the knowledge and belief on the part of the Defendant that he was receiving or handling a stolen vehicle. However, when their cumulative effects were combined and considered, it could only be concluded that the irresistible inference of the guilty knowledge of the Defendant must be so compelling and was one which was beyond reasonable doubt. AUTONUMOUT The trial judge emphasised the firmness of his conclusion by saying that, in his judgment, to come to any other conclusion would defy common sense. AUTONUMOUT It is, however, the applicant's case that the trial judge's analysis of the various features of the evidence was flawed. It is submitted that, on a correct analysis of the evidence, it is not possible to draw an irresistible inference of the applicant's guilty knowledge. In short, that it is not possible to prove his guilt beyond a reasonable doubt. AUTONUMOUT The relevant background facts may be described as follows. AUTONUMOUT On 16 January 2005, a black-coloured Honda Accord was involved in an accident. It sustained extensive body damage but seemingly no damage to the engine or the interior. The owner of the vehicle, PW1, decided to sell it for scrap. About four days later, somewhere around 20 January 2005, he agreed to sell the vehicle for \$40,000 to a Mr Li. A hand-written agreement was drawn up, a deposit paid and the registration document handed over. In early February 2005, the balance of the purchase price was paid to PW1. AUTONUMOUT Although a man with the same surname as the applicant had purchased that black Honda, there was no evidence that he was the applicant. AUTONUMOUT The black Honda was the vehicle to be cannibalised in the ring-neck operation. At the time of its sale by PW1 it bore the registration number LF

8199. Its engine number was H22A 5000556 and the chassis number CLI-1000606. All these details were reflected in the registration book. AUTONUMOUT On 26 February 2005, about three weeks after PW1 had finalised his sale of the black Honda to a Mr Li, a white Honda Accord was stolen. The value of that vehicle at the time of that theft was about \$150,000. AUTONUMOUT The white Honda formed the second vehicle in the ring-neck operation. If it was to be sold to an unsuspecting member of the public, it had to be disguised as a vehicle that had been legitimately acquired and, of course, there had to be an applicable registration book. The damaged black Honda provided the means of disguise and the registration book. AUTONUMOUT At some time after the theft of the white Honda, a person or persons unknown put the engine of the damaged black Honda into the white Honda. In

addition, the chassis number of the white Honda was changed to make it accord with the chassis number of the damaged black Honda. AUTONUMOUT That left just two matters that had to be dealt with to make the identifying features of the stolen white Honda reflect the identifying features recorded on the face of the black Honda's registration document. First, the registration colour black would have to be changed to white and, second, the registration number of the white Honda would have to be changed. AUTONUMOUT On 9 March 2005, only some 11 or 12 days after the white Honda had been stolen, the applicant went to the offices of the Transport Department to have registered in his name what the registration document showed to be the black Honda but was, in main substance at least, the white Honda. AUTONUMOUT At the time of having the vehicle registered in his name, the applicant applied to change the colour of the vehicle from black to white, a simple application that involved no expense to him. In respect of the registration number, even though he intended to sell on the vehicle, instead of leaving the registration number as it was, the applicant chose to pay a sum of \$560 to have the vehicle's registration number retained and an entirely new number substituted. This new number was LV 6091. AUTONUMOUT In the result, a new registration document was issued to the applicant showing him to be the owner of a white Honda Accord bearing registration number LV 6091, only the engine and chassis numbers being those of the damaged black Honda. AUTONUMOUT Having had the white Honda registered in his own name, the applicant then sought a buyer for it by placing advertisements on the internet and in magazines. But the applicant did not only advertise the vehicle itself for sale. He also advertised for sale a Honda Accord engine and a full set of car seats which would fit into a Honda Accord. AUTONUMOUT Whoever swapped the engine of the white Honda for the engine of the black Honda would, of course, have been left with a spare Honda engine. Equally, as the interior of the black Honda had not been damaged, a serviceable set of car seats, among other items, would have been available for sale. As the trial judge observed In the process of combining the two vehicles into one, apart from the chassis of the black Honda which was damaged, quite a number of vehicle parts and accessories were duplicated as they were coming from the same model of the vehicle. AUTONUMOUT As it was, by chance the applicant's advertisements were seen by PW5, the owner of the white Honda, who at the time was looking to replace his stolen vehicle and was doing so by reading magazines and studying the internet. PW5 was able to inspect the advertised vehicle and recognised it as his stolen car because of marks of wear and tear on its body. AUTONUMOUT The applicant was arrested and after his arrest made a statement under caution. In that statement, he made a number of assertions as to how he had come to acquire the stolen white Honda. AUTONUMOUT Being a private trader, he said that he had seen the vehicle advertised for sale and had purchased it for a sum of \$110,000 cash from a man he knew only as Ah Ming. He had examined the vehicle, he said, satisfying himself that relevant identification numbers matched the registration book. As to the state of the vehicle, the applicant said that it had not been necessary to make any alterations or to effect any repairs. It was therefore implicit in his cautioned statement that, when he had purchased the car, the engine swap had already taken place and the chassis number had already been changed. It

was also implicit that, when he had inspected the vehicle, the number plates of the black Honda had been placed onto that vehicle. AUTONUMOUT The applicant said that he had never learnt the full name, or other personal particulars, of the seller, Ah Ming. They had spoken by mobile telephone, he said, and once the sale had been completed he had no reason to keep the number. The sale had been for cash, no receipt being given. That, he said, was the way his customers requested it. The applicant said that he did not know whether Ah Ming had been the registered owner of the vehicle or not. They had met at the offices of the Transport Department and all he recalled was that the registration book had been given to him to enable him to effect transfer. AUTONUMOUT In his cautioned statement, the applicant was not asked, nor did he volunteer, why he had paid \$560 to obtain a new registration number instead of accepting the existing number. Equally, nothing was said in the cautioned statement as to the fact that the applicant, on his assertion, had purchased a white vehicle even though the registration book recorded it as a black vehicle. AUTONUMOUT As to why, in addition to the vehicle itself, he had also advertised a Honda engine for sale and a full set of car seats that would fit into a Honda, the applicant said that the engine was in fact the engine in the white Honda and that the seats were in fact the seats in that vehicle too. They had been advertised for sale, he said, not for the purpose of sale but instead by way of market research ; that is, to see whether there was a demand for them as single items. AUTONUMOUT In our view, the trial judge was correct to conclude, as he did, that, while individual features of the circumstantial evidence may have been explicable, when taken together they presented compelling evidence that the applicant, when he dealt with the white Honda Accord, must have known or believed it to be a stolen vehicle. AUTONUMOUT In our view, the trial judge was further correct to reject the applicant's assertions contained in his cautioned statement as lacking credibility; indeed in respect of one matter of central importance the putting up for sale of the engine and car seats as being entirely incredible. AUTONUMOUT It is to be remembered that the applicant had the stolen white Honda Accord registered in his name on 9 March 2005, no more than 12 days after it had been stolen. AUTONUMOUT As to the circumstances of his acquisition of the car, although the applicant said that he was a private dealer in cars and intended to sell this car on, he had no details whatsoever of the man called Ah Ming who he said had sold it to him. He, therefore, had no means of contacting him if anything should be found to be wrong with the vehicle. Nor did he have a receipt to evidence payment, this despite the fact that a sum in excess of \$100,000 cash had supposedly passed hands. AUTONUMOUT In this regard, while it is true that PW1, the seller of the black Honda, testified that he himself had no way of contacting or recognising the Mr Li who had bought the car from him, the circumstances of his sale were markedly different. PW1 was not a trader in motor vehicles and he had sold his car as a one off deal for the purposes of scrap only. AUTONUMOUT As we have said earlier, once the engine of the white Honda had been swapped with the damaged black Honda and once the black Honda's chassis number had been put into the white Honda, that left only two more matters that had to be dealt with before it could be sold to an unsuspecting buyer using the black Honda's registration document. First, the registration document had to be changed to show that the car was

white and not black and, second, the registration number itself had to be changed. In both these matters, it was the applicant who changed the registration document. AUTONUMOUT As a private dealer, intending to sell the car, the applicant need not have registered the car in his own name. He could have effected one change of ownership only; that is, to the ultimate buyer if and when he was found. He chose, however, to have the vehicle registered in his own name. More than that, he chose not to leave the registration number as it appeared in the registration book that number, of course, being a direct link back to the damaged black Honda but to pay a sum of \$560 in order to retain the existing number for himself and obtain an entirely new number for the vehicle. In this regard, no explanation was given, certainly no explanation to the effect that the existing number would be unacceptable to the market or that a new number would secure a marked commercial advantage. AUTONUMOUT As to the applicant's application to change the particulars of the vehicle's colour from black to white, we agree with the trial judge that, if the applicant had been an innocent buyer, the need for such a change would have put him on the alert. AUTONUMOUT The operation of ringing, which somebody in this case must have carried out; that is, the taking or swapping of parts for the purposes of disguising the stolen car, would have resulted in certain parts being surplus. In the present case, this would have included a Honda Accord engine and, among other items, a set of seats that would fit into a Honda Accord. The applicant, as it was, itemised these items for sale as individual items. It was his explanation in his cautioned statement that these were not parts being sold separately; indeed, seemingly they were not being sold at all. It was his explanation that the engine was the engine in the white Honda and the car seats too were part of that vehicle. He was advertising them for the purposes of his own market research to see if parts like that could be sold separately. Indeed, he was advertising them, so the evidence now appears, in magazines which advertised hundreds of car parts and car accessories. The explanation put forward by the applicant was rejected by the trial judge as being incredible. We agree. As the trial judge found and again we agree, the engine and the set of car seats would only have been advertised for sale because the applicant had access to an engine and a set of car seats additional to those which were now part of the stolen white Honda Accord. AUTONUMOUT On behalf of the applicant, Mr McGowan questioned the strength of the trial judge's analysis of the various features of the evidence. In our judgment, however, what cannot be criticised is the conclusion of the trial judge, based on the totality of the evidence, that there was only one irresistible inference that could be drawn; namely, that, when he dealt with the stolen Honda, the applicant knew or believed that it was stolen. AUTONUMOUT Accordingly, the application for leave to appeal against conviction is dismissed. AUTONUMOUT In respect of sentence, it was submitted by Mr McGowan that a sentence of four years imprisonment after trial was, in all the circumstances, manifestly excessive. It was Mr McGowan's argument that the authorities relied upon by the trial judge to conclude that a sentence of four years was appropriate concerned cases of graver moral culpability. AUTONUMOUT While we accept that the sentence was on the high side, we do not see how it can be said to be manifestly excessive. AUTONUMOUT We start with the underlying principle stated by the Court of Appeal in

Cheng Chun Ming CACC 356 of 2000 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. AUTONUMOUT We take into account that the applicant, who has some eight previous convictions including three related to theft, was himself a dealer in cars, not a substantial or full-time dealer but nevertheless a participant in the trade who had profited from that participation over an extended period of time. In Wong Kam Tat, CACC 446 of 2001, Stock J, giving the judgment of the court spoke of the seriousness that must be visited upon persons who are motor dealers 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. More than that, as Stock JA observed 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. AUTONUMOUT In our view, the applicant in the present case can be said to have used his know-how to attempt to fool an innocent buyer. AUTONUMOUT Accordingly, the application for leave to appeal against sentence is also dismissed. (M. Stuart Moore) (Robert Tang) (M.J. Hartmann) Vice President Vice-President Judge of the Court of First Instance Mr Robert S.K. Lee, SADPP of Department of Justice, for the Respondent Mr James H.M. McGowan and Mr Yeung Shak-nung, instructed by Messrs Eric Yu & Co., for the Applicant 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 G 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 Microsoft Word Document MSWordDoc Word.Document.8

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