

HONG KONG / JUDGMENT

HKSAR v. LI SHEUNG SZE

COURT

Court of Appeal

DECIDED

5 July 2007

CASE / FILE NUMBER

CACC218/2006

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Before : Hon Stuart-Moore, VP, Stock JA and Beeson J in Court Date of Hearing : 5 July 2007 Date of Judgment : 5 July 2007

J U D G M E N T

Hon Stock JA (giving the judgment of the Court): AUTONUMOUT In this case, the applicant was convicted by Judge Chua in the District Court on 26 May 2006, on the basis of forensic evidence, overwhelming in its effect. When he was arrested on 18 June 2005 in Central, he had in his possession, amongst other implements, a screwdriver the tip of which had been broken. Two days later the tip of that screwdriver was found on the inside of a metal gate of premises in the building at which he was arrested. An attempt had been made to enter those premises. The applicant was convicted of attempted burglary. On 9 January 2007 the applicant was heard by a single judge on his application for leave to appeal against conviction but, not surprisingly, the single judge, Cheung JA, refused leave. The applicant now renews his application.

AUTONUMOUT At the material time, the applicant was employed as a repair technician and provided with a bag of tools for his work. On the morning of Saturday 18 June 2005 he had been to Aberdeen on a task assigned by his employers. Having completed his job at 11 a.m. he did not return but in due course he was seen in Central by the police. He was still carrying his bag of tools and he went into Tak Woo House. He went to the 18th floor; and then to the 13th floor; then to the third floor; and then to the ground floor where he was intercepted. AUTONUMOUT He told the police that he had been to the fifth floor to carry out a repair job but when asked the name of the company that required the repair, he gave no answer. Then he said that he had come to have a massage but he could not name the floor at which the massage establishment was located, and the evidence was that there was no massage establishment in the building. AUTONUMOUT In one of his trouser pockets there was found a yellow card, of a type that could be used though not

necessarily so to gain entry to premises. In another pocket were some gloves. When asked why he had the card, he made no reply. In the bag which he was carrying were the tools of his trade, including screwdrivers and spanners. These were taken to the police station and examined and according to the evidence of the prosecution, the tip of one of the screwdrivers was broken. AUTONUMOUT On 20 June 2005, the police went back to the premises and there spoke to a gentleman who had his office on the 18th floor. He said in evidence that he had locked the shutter gate to his office at 1:15 p.m. on the afternoon of 18 June but when he returned the following day he could not open it with his key. On 20 June he saw the police examine the gate and the area nearby and find a fragment of metal on the carpet on the inside of the gate. A scientific evidence officer was called and his testimony was that there was a small shiny prising-mark damage with striated marks on the metal panel adjacent to the lock which suggested that it could have been made recently by a flat-bladed metal tool. He made a tool mark casting and thereafter a physical fit of the fragment of metal and the screwdriver. It was a perfect fit. AUTONUMOUT The evidence was supported by that of a forensic scientist who found that under magnification the fine striations on the control tool marks agreed with those on the tool mark casting taken from the gate. He concluded that the metal fragment had broken off from the screwdriver and that the screwdriver had been used to damage the surface. AUTONUMOUT The applicant did not give evidence at his trial. His only explanation had emerged at interviews after his arrest. He said that he had taken medication for tonsillitis and had gone to Central for a massage but had wandered the building looking in vain for the massage place. As for the yellow card found in his pocket, he had picked this up, he said, from a rubbish bin because he found it cute. He did not know why the screwdriver was chipped. AUTONUMOUT The applicant has provided to us extensive written grounds of appeal and has also addressed us orally. Amongst the matters he advances he complains that the trial judge did not analyse the credibility of the witnesses; that the prosecution did not find out whether there was a similar screwdriver at the address on the 18th floor; that it may well be that the scientific evidence officer had broken the screwdriver when trying to open the metal grille; that none of the police officers in their original notes and statements made reference to the fact that the screwdriver had been chipped a fact, we note, taken into account by the judge who accepted the explanation given; that the judge failed to take into account that the applicant was in employment and had no need to commit crime; that he had, on any view, not been in the building for long; that the yellow plastic card might have been used for a number of wholly innocent purposes; that the gloves found on him were part of his trade tools; and a number of other points the details of which it is not necessary for us to repeat. AUTONUMOUT We are satisfied that there is nothing of merit in any of the grounds raised by the applicant. Gloves or no gloves, yellow card or no yellow card, the applicant was convicted on the basis of his proved and admitted presence in the building in which an attempt had been made to enter the premises on the 18th floor and on the additional and damning fact, which the judge found, that in his possession was a broken screwdriver the tip of which was located in the very premises of the attempted burglary. There was only one reasonable inference to be drawn and that is the inference which the judge drew. The application for leave to appeal against conviction is dismissed. [Submissions] AUTONUMOUT This applicant has persisted in the application for leave despite having been refused leave by the single judge and has done so in the face of

evidence as compelling as might be imagined. He has submitted copious material which this court has had to study, none of which in the event discloses anything of merit whatsoever. This is precisely the sort of case to which section 83W of the Criminal Procedure Ordinance, Cap. 221 is directed; and we order that three months of the period served in custody between the date of his application and the determination of it shall not count towards his sentence. (M. Stuart-Moore) Vice-President (Frank Stock) Justice of Appeal (C-M Beeson) Judge of the Court of First Instance Applicant in person Ms Rosaline Leung, SGC of the Department of Justice for the Respondent
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