

HONG KONG / JUDGMENT

HKSAR v. LOWE KOON WUN, HAROLD

COURT

Court of First Instance

DECIDED

14 February 2007

CASE / FILE NUMBER

HCMA1198/2006

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bjbj HCMA 1198/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 1198 OF 2006

HKSAR and LOWE Koon-wun, Harold

Before: Hon Wright, J., in Court Date of Hearing: 14 February 2007 Date of Judgment: 14 February
2007

JUDGMENT

The appellant appeals his conviction, after trial during which he was represented by counsel assigned by the Duty Lawyer Scheme, of a single charge of theft. The offence occurred in a restaurant and related to the theft of a woman's handbag. The prosecution tendered two witnesses, the first being the owner of the handbag who testified that her handbag had been placed on her chair behind her back: she suddenly felt that it was cool behind her and discovered that her bag was missing. She accepted when cross-examined that her bag may have fallen from the chair onto the floor: she did not actually see it being appropriated. When she was aware of the absence of her bag she looked up and saw the appellant walking hurriedly towards the exit of the restaurant carrying three items one of which was her bag. Based on her observation, she believed that the appellant had attempted to conceal her bag with one of the other bags he was carrying. She went after the appellant, intercepted him and asked why he had taken her bag. He said he had not done so. There was a struggle during which the appellant threw the bag to the ground. That struggle attracted the attention of the second prosecution witness, an off-duty policeman also present in the restaurant: he intervened. Police officers were summoned to the scene and the appellant arrested. The appellant elected to give evidence during which he said that as he was leaving the restaurant he had seen the handbag on the floor in an aisle and had

picked it up intending to hand it to a manager. He had seen a person whom he took to be a staff member some 20 feet away and was making his way towards her when the first prosecution witness accosted him and accused him of taking her bag. He accepted that he had thrown the handbag away. He had told the first prosecution witness that he had simply picked up her bag, not taken it. The off-duty policeman had intervened. The appellant raises three discrete points on appeal: firstly, that the trial was unfair because it took place only two days after the commission of the offence which deprived him of sufficient time to prepare his defence; secondly, there was no independent witness with the conviction being a result of "emotional judgement" by the magistrate; thirdly, "new evidence" is available which would affect the outcome of the appeal. The offence occurred on 8 November 2006. The appellant appeared before court on 9 November 2006 when the trial was fixed for 10 November 2006. This was necessary because of the fact that the first prosecution witness was leaving Hong Kong 11 November 2006. Her evidence obviously was fundamental to the prosecution case. Although not commonplace, such situations arise from time to time in the magistracy. The appellant had sufficient time to engage the services of the Duty Lawyer Scheme and was represented at trial by experienced trial counsel. The evidence of the first prosecution witness was simple and straightforward. The appellant's main complaint under this first point seems to be that he did not have sufficient time to collect proof of his employment. Had trial counsel thought it necessary to obtain that documentation it would, of course, been open to her to seek an adjournment once the first prosecution witness, who would have been unable to comment on the appellant's employment anyway, had given her evidence. There is no merit in this first point. The magistrate was well aware of the issues that were involved. The appellant today criticises the magistrate's analysis of the evidence. This was a matter in which the magistrate need assess the credibility of the witnesses in order to make his findings of fact. He had the advantage over me of seeing and hearing their testimony. It was a straightforward, uncomplicated matter. The magistrate evaluated the evidence and concluded that he accepted that of the first prosecution witness but rejected that of the appellant. He was entitled to make that assessment. This is not a matter which requires corroborative evidence: if the evidence of a single witness establishes the offence and is of sufficient quality, the magistrate found it to be both, he is entitled to convict. There is no merit in the second point. Based on the facts which he found proved the magistrate was entitled to and did draw the inference that the appellant had the requisite intention to steal the handbag. There was, of course, no dispute that the appellant was in possession of the handbag. More particularly, there was no dispute that when the appellant was accosted by the first prosecution witness he threw away the bag: this is hardly conduct consistent with a person concerned with ensuring that the bag was returned to its rightful owner. Whether the appellant was or was not employed on the day in question is irrelevant both to the commission of the offence and to his credibility. There was no challenge to his assertion that he was employed. Documentary proof of that employment takes the matter no further. There is no merit in the third point. On the evidence which the magistrate correctly accepted, the only inference to be drawn is that the appellant had dishonestly appropriated the bag - whether he had taken it from the back of the chair or picked it up from the floor. The appeal is dismissed and the conviction confirmed. (A R WRIGHT) Judge of the Court of First Instance High Court Ms Janice Kwan, Government Counsel of the Department of Justice, for the HKSAR

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