

HONG KONG / JUDGMENT

# HKSAR v. TSANG CHE KEUNG

## COURT

Court of Appeal

## DECIDED

17 July 2007

## CASE / FILE NUMBER

CACC88/2007

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Before : Hon Stuart-Moore, VP, Stock JA and Saunders J in Court Date of Hearing : 17 July 2007  
Date of Judgment : 17 July 2007

## J U D G M E N T

Hon Stock JA (giving the judgment of the Court): AUTONUMOUT This applicant seeks leave to appeal against conviction and sentence. AUTONUMOUT There were two charges. The first alleged that on 22 November 2005 in Tsuen Wan he robbed Wong Hoi Sang of 208 boxes of electronic components; and the second that on the same day and at the same place he took a conveyance, namely, a goods vehicle, without authority. On 14 March 2007 he was convicted of both offences by Judge Chua in the District Court. AUTONUMOUT The facts are straightforward. Mr Wong is a lorry driver and his function on 22 November 2005 was to drive a lorry containing boxes of electronic parts. He said that he had cleaned the vehicle that morning including the steering wheel. At about 8 p.m. that evening, he saw a man whom he estimated to be aged 25 to 30 years approaching the vehicle in a suspicious manner and Mr Wong, who was in the driver's seat, locked the driver's door. The man produced a long knife and used its handle to smash the window causing glass pieces to fly about. The robber forced Mr Wong to the passenger seat and himself embarked the vehicle and drove it away, just before which Mr Wong jumped out. A few hours later the vehicle was examined by a scientific evidence officer who discovered bloodstains on the steering wheel. Those stains have been analysed and compared with DNA samples taken from the applicant upon his arrest in September 2006. His conclusion was that the blood was that of the applicant: the probability that a randomly selected person in the local Chinese population, unrelated to the applicant, would have his DNA was one in 56 quadrillion. AUTONUMOUT On 14 September 2006, there was an identification parade, at which Mr Wong identified the applicant as the man who had taken his lorry. The evidence was that at one stage, before he made the

identification, he asked the inspector in charge of the parade whether 50 to 60% certainty would be good enough, but he was told that he had to be certain. This was a matter that was canvassed at trial. Mr Wong explained that he had asked the question because the applicant had, during the parade, kept his head down and he, Mr Wong, could only see part of his face. He told the court that he had been sure, when he identified him, that the applicant was the robber. AUTONUMOUT The applicant's case at trial was that he could not remember where he was on 22 November 2005 and asserted that he had never touched any part of stolen vehicle or driven it. He could only think that without noticing it he might accidentally have leaned on the lorry when he passed it on the street or, possibly when it had been driven to a construction site, for the applicant had business or work at construction sites. He also suggested that from time to time he would move lorries at such sites. AUTONUMOUT The judge correctly noted that his explanation could not account for blood inside the vehicle. His blood inside the vehicle was consistent with him cutting himself when he shattered the glass. She took the view that Mr Wong was an honest witness and, presumably, in this regard accepted his explanation as to why at first at the identification parade he was not certain; but in any event she gave herself a correct warning about the dangers of identification, noting in particular the time gap between the robbery and the identification. She concluded however that the identification evidence was compellingly supported by the DNA test and accordingly she convicted the applicant. AUTONUMOUT In his grounds of appeal, the applicant says that he is baffled as to the presence of his blood in the vehicle and suggests that advanced technology would be able to date the time at which the blood came to be there. He emphasizes the uncertainty of the witness Wong at the identification parade and repeats his assumption that he could have come into contact with the vehicle at a construction site or a housing estate, though this, once again, does not explain how his blood came to be inside the vehicle. He also points out, as the judge noted, that there was a discrepancy in the estimate made by Mr Wong of the culprit's age and this applicant's actual age, significantly older than the estimate. The judge specifically noted this but said that despite the fact that the applicant had grey hairs, he had a youthful face. AUTONUMOUT The presence of blood inside the vehicle within a few hours of the robbery is wholly consistent with the testimony of Mr Wong that the robber had smashed the glass and then taken hold of the steering wheel. The only sensible inference is that the blood belonged to the robber. That blood was this applicant's, and we see no basis upon which to allow this application. The application for leave to appeal against conviction is accordingly dismissed. Sentence AUTONUMOUT The applicant also seeks leave to appeal against sentence. The judge sentenced the applicant to five and a half years imprisonment for the first charge and four years imprisonment for the second and ordered the two sentences to run concurrently: a total of five and a half years. The applicant makes no submission as to sentence. We are satisfied that the sentence was neither manifestly excessive nor wrong in principle and, accordingly, the application for leave to appeal against sentence is also dismissed. (M. Stuart-Moore) Vice-President (Frank Stock) Justice of Appeal (John Saunders) Judge of the Court of First Instance Applicant in person Mr K P Zervos, SC, DDPP(Ag) of the Department of Justice for the Respondent 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 & `#\$ % ^,X v?\_. J[ 6 vx@n .l^L k1B[p "E)`r c@sH <~j6 f8&s J[ 6 .l^L k1B[ v?\_. "E)`f8&s & 6" setup ABC.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc

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