

HONG KONG / JUDGMENT

HKSAR v. WONG YUNG AND ANOTHER

COURT

Court of Appeal

DECIDED

21 June 2007

CASE / FILE NUMBER

CACC349/2006

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bjbj Tey

Hon Stock JA (giving the judgment of the Court): AUTONUMOUT Each applicant seeks leave to appeal against conviction. They were charged as follows: that each of them, on 6 November 2005 at Room 3208 On Pak House, Cheung On Estate, Tsing Yi trafficked in dangerous drugs, namely 177 tablets containing 2.57 grammes of midazolam, 25.81 grammes of a mixture containing 10.85 grammes of heroin hydrochloride and 28.77 grammes of a powder containing 0.11 grammes of methadone; that on 6 November 2005 the second applicant (D2 at trial) obstructed police officers in the execution of their duty; and that on the same day and at the same place the first applicant (D1) attempted to pervert the course of public justice by seeking to destroy dangerous drugs. AUTONUMOUT They pleaded not guilty but were convicted after trial by Deputy District Court Judge Yau on 26 July 2006. D1 was sentenced to a total term of five years and eight months imprisonment and D2 to a total term of five years and ten months imprisonment. AUTONUMOUT The facts found by the judge were as follows. At 6:35 a.m. on 6 November 2005 D1 entered Hong Kong at Lok Ma Chau and he was followed to Room 3208 On Pak House. Shortly after 9 a.m. police officers attempted to break into the flat cutting the padlock of the iron grille. When they tried to push open the wooden door, D2 was seen bare-chested and barefooted, wearing a pair of jeans and he used his body and hands to push the door to prevent it from being opened even though the police announced who they were. When they gained entry they saw D1 run out of the kitchen towards an adjacent lavatory and throw into it two plastic bags containing a substance. D1 was arrested and upon him were found keys fitting the iron grille and the wooden door to the flat. D2 was arrested and said that he had come to the premises to obtain bail receipts. In the kitchen were found dangerous drugs and packing and other drug trafficking paraphernalia, including an electronic scale, plastic bags, and scissors. There were also found four mobile telephones three of which belonged to D1 and one to D2. AUTONUMOUT When D2 was later interviewed he said that he had gone to the flat to obtain heroin from D1 but for his own consumption. He said that that had been the second occasion upon which he had gone there for that purpose. At trial, he challenged the admissibility of the statement but his challenge did not succeed. AUTONUMOUT D1 gave evidence and called one witness. He said that he was not the

owner of the flat and only knew the people living there and went to stay there regularly. The money he had on him, an amount of \$15,000, he had, he said, collected from his wife on the Mainland and on his return to Hong Kong on 6 November 2005 he had gone to the flat where he found D2 as well as others. He said that one of the officers who raided the premises that morning was a police officer for whom he, D1, was an informer. He asserted that he had no knowledge about any of the things seized inside the premises and he denied that he had rushed to the lavatory or thrown anything in it. His witness testified that D1 was merely one of several who slept at the flat. D2 did not give or call any evidence. AUTONUMOUT The judge accepted the evidence of the police officers and rejected that of D1 and of his witness. That being so, it is difficult to see to what conclusion the judge could have come other than that which resulted in the conviction of D1 in respect of the two charges he faced. In his grounds of appeal against conviction, D1 says that the judge was not impartial and paid no regard to relevant discrepancies in the prosecution evidence nor had the judge considered submissions made by his lawyer. We have today heard further grounds advanced by D1 orally and at length. We found nothing of merit in his complaints and the application of D1 for leave to appeal against his conviction is dismissed. We shall in due course hear him as to whether there is any reason why we should not exercise our powers under section 83W of the Criminal Procedure Ordinance, Cap. 221, to order loss of time. The papers show that this applicant has filed an application for leave to appeal against sentence, though he insists he did not. He did not wish to pursue such an application and since, whether intentionally or not, it is alive on the papers, we must dispose of it which we do by dismissing it. AUTONUMOUT D2 also complains that the judge did not maintain an attitude of neutrality and draws our attention to suggested contradictions in the Reasons for Verdict. He makes other specific points both in writing and orally today before us such as the absence of forensic evidence against him, but we see no merit in these. This was a defendant who had been seen bare-chested and barefooted in small premises, a fact inconsistent with a person who was visiting there for a few minutes to buy drugs. It is further implicit in the evidence related by the judge that D1 was in those premises which had been under observations for a considerable period prior to the police raid and before D1's arrival. The evidence established that he helped D1 in the attempt to dispose of drugs in that he delayed the entry of the police to the premises and, furthermore, one notes that his mobile telephone was found immediately next to those of D1. The inference drawn by the trial judge was in the circumstances the appropriate inference to draw and the application of this defendant for leave to appeal against conviction is also dismissed. In his case too we shall hear him as to whether there is any reason why we should not exercise our powers under section 83W to order loss of time. [Representations made] AUTONUMOUT We have heard each applicant as to why we should not exercise our powers under section 83W of the Criminal Procedure Ordinance. In the case of the first applicant, there was no vestige of merit in his application and we direct that three months of the time during which he has been in custody pending the determination of his application shall not be reckoned as part of the term of the sentence to which he is subject. In the case of the second applicant since one of our number was at one stage exercised by the question whether the inferences were all one way, we do not think it appropriate to exercise our powers under section 83W and no order will be made. (M. Stuart-Moore) Vice-President (Frank Stock) Justice of Appeal (M.A. McMahon) Judge of the Court of First Instance

Both Applicants in person Mr Vincent Wong, SGC of the 1udk 1udk T U V &`#\$ v?_. J[6 CfT(.l^L k1B[p J[6 .l^L k1B[v?_. & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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