

HONG KONG / JUDGMENT

HKSAR v. YAU PAK CHIU

COURT

Court of First Instance

DECIDED

8 November 2007

CASE / FILE NUMBER

HCMA772/2007

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bjbj qHR' Sgq) Appellant

Before: Deputy High Court Judge Line in Court Date of Hearing: 8 November 2007 Date of Judgment: 8 November 2007

J U D G M E N T

This is an appeal against conviction for theft. The prosecution case was that the defendant had been stopped by a police officer in the street and found to be carrying a Watson s plastic bag which contained eight tins of abalone, and that upon questioning, the defendant said, I stole them at about 8 pm yesterday inside the Wellcome Supermarket, Kwai Chung Shopping Centre. The manager of the supermarket was called to give evidence, and he said that whilst he could not say the tins of abalone definitely came from his supermarket, they were identical to ones that he sold; that they bore a discounted price label on them which was the same discounted price label he put on such tins in his shop; that he checked his shelf when asked by the police on the day and that his shelf area had been emptied of such tins of abalone. The defendant gave evidence. He said he had not been carrying anything when he was stopped in the street; that his identity card was checked; and that when the police officer, having searched him, found nothing incriminating upon him, the officer went to a nearby rubbish basket and picked up the plastic bag containing the abalone. He said, in effect, that the police had made up the case against him, planted the evidence upon him, and invented the incriminating remark. The issue in the case was and is a matter of credibility. Of course, the magistrate had the advantage of seeing and hearing the witnesses give evidence live before him, an advantage that I lack, trying the case on paper. However, I am not going to decide the case merely on that basis, saying the magistrate must be right. Having evaluated the material before me. I come to the same conclusion as the magistrate, and the main reason I do so is this: that the remark about stealing the tins from the Wellcome Supermarket at the Kwai Chung Shopping Centre obviously fits very nicely with the facts that the

discounted labels matched up and that the shelf was empty so soon after the relevant time at the particular supermarket which was mentioned in the verbal remark. If the policeman had invented the remark as the Appellant suggests he did, then he has made it fit those facts about the label and the empty shelf. Either that would be a lucky coincidence for him, or the policeman at some earlier stage had gone to the Wellcome Supermarket, presumably purchased the whole abalone from the shelf, taken it out on duty with him, put it in a rubbish basket, waited for a perfectly innocent street passenger to come by and then pick on him and plant the evidence on him. I regard that scenario as being unrealistic. On the evidence before me, I am sure the conviction is a good one, and the appeal against it is dismissed. (P Line) Deputy High Court Judge Representation: Mr Martin Hui, Senior Government Counsel of the Department of Justice I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V & `#\$ bZ < =RM/L\$t\ [g\k [g\k =RM/ Normal.dot setup Microsoft Word 9.0 f4R' Title Microsoft Word Document MSWordDoc Word.Document.8

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