

HONG KONG / JUDGMENT

HKSAR v. YEUNG CHI KEUNG

COURT

Court of Appeal

DECIDED

10 May 2007

CASE / FILE NUMBER

CACC355/2006

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Before : Hon Stuart Moore VP, Burrell J and McMahon J in Court Date of Hearing : 4 May 2007
Date of Judgment : 4 May 2007 Date of Reasons for Judgment : 10 May 2007

REASONS FOR JUDGMENT

Burrell J (giving the reasons for judgment of the Court) : AUTONUMOUT On 14 July 2006 the applicant was convicted in the District Court after a trial before H.H. Judge Whaley of trafficking in a dangerous drug, namely 34.32 grammes of a solid containing 24.46 grammes of cocaine. He was sentenced to five years and three months imprisonment. AUTONUMOUT At trial the applicant admitted that he was in possession of the drugs at the material time. The sole issue was the reason for that possession. The applicant offered a plea to simple possession claiming that all the drugs were for his own consumption. The prosecution did not accept that offer. He was convicted of the more serious offence of being in possession for the purpose of trafficking. He now seeks leave to appeal that conviction. AUTONUMOUT At trial, all the facts were agreed. The applicant also admitted the accuracy of a video recorded interview which, broadly speaking, was consistent with his defence. The applicant elected not to give evidence, neither did he call any witnesses. AUTONUMOUT The effect of the agreed evidence was as follows. The applicant was driving a car at about midnight on 27 January 2006. There were three passengers on board. After parking the vehicle he was intercepted by the police and searched. In his jacket pocket he was carrying 61 plastic bags each containing a small quantity of cocaine. The total weight was later found to be 34.32 grammes of a solid containing 24.46 grammes of cocaine which had a street value of approximately \$23,000. AUTONUMOUT In the course of the recorded interview he said he had purchased the cocaine the previous day from a man named Ah Wai for \$10,000. He had known Ah Wai for about three months having met him at the 348 Discotheque. He said he had bought all the drugs for his own consumption. He had bought in bulk because it would be

cheaper to do so before the New Year. He said his daily consumption was four to six granules but if he was out having fun it might go up to 10 to 20 granules. AUTONUMOUT He said he was carrying all 61 packets because he did not want to leave them at his home where his family might find them. He did not want to get them into trouble. AUTONUMOUT It was also agreed that he had one previous conviction for possession of dangerous drugs for which he had been fined \$5,000 in 1998. AUTONUMOUT Finally, a report prepared by Dr Cheung, a Senior Medical Officer from the Kwai Chung Hospital Substance Abuse Assessment Unit, was admitted into evidence, by consent, under section 65B of the Evidence Ordinance. The doctor's expertise was not challenged, neither were the contents of his report. AUTONUMOUT His report stated that according to Kwai Chung Hospital Substance Abuse Assessment Clinic, the average daily dosage for crack cocaine was estimated to be 450 milligrammes. AUTONUMOUT Mr Phillip Ross, counsel for the applicant advances three grounds of appeal. AUTONUMOUT Firstly, that the evidence of the daily cocaine intake of an addict was inadmissible hearsay. He further submits that there was no evidential support for the current validity of the statistic. Thus, it is argued, the judge should have placed no reliance on it and was therefore not entitled to find that the 61 packets found on the applicant's person represented approximately 61 separately packaged daily doses. (The arithmetic being that 34.32 grammes divided by 450 milligrammes is 76 and 24.46 grammes divided by 450 54.) AUTONUMOUT There is no merit in this ground. Dr Cheung's report was admitted under section 65B of the Evidence Ordinance. As such there was no requirement to prove his expertise. Both his expertise and the contents of the report were unchallenged at trial. There was simply no issue at trial concerning the average daily cocaine dosage in Hong Kong. Dr Cheung's opinion on any matter within his expertise was plainly admissible. Accordingly the judge was entitled to place such reliance on any matter contained therein as he saw fit. Moreover, experts may obtain the information they base their opinions on from a variety of sources. There can be no objection in this case to Dr Cheung obtaining information from the Kwai Chung Hospital Substance Abuse Assessment Centre. AUTONUMOUT Secondly, Mr Ross submitted that the conviction was unsafe because the evidence of the applicant's daily intake of cocaine was vague and insufficient. The applicant had referred to granules and not grammes or milligrammes when describing his own intake. In his written submission Mr Ross argued that accordingly, even though the learned judge did not rely on granules to convict, a conviction could not be relied on through the applicant's admission as to granules intake. AUTONUMOUT As we understand the argument the complaint is that there was no evidence as to what a granule weighed and therefore it was impossible to determine what the applicant's daily intake was. AUTONUMOUT There is no substance in this argument. The judge was entitled to proceed on the basis of the expert evidence. Accordingly the applicant's reference to granules was of no significance. On the evidence before the court it was a matter of simple arithmetic that whilst on his way to the 348 Discotheque the applicant was in possession of at least 50 daily doses of crack cocaine worth \$23,000. Not surprisingly the judge placed considerable weight on this finding when concluding that the applicant intended to traffick those drugs. AUTONUMOUT The third and final ground is that the judge was in error when he stated the following in his reasons for verdict I take judicial notice of the fact that discotheques such as Disco 348 mentioned by the defendant are well known as places where dangerous drugs are commonly sold and/or

consumed. Of course, this does not apply to all discotheques, however discotheques are commonly policed by undercover police officers. AUTONUMOUT There can be no criticism of this passage. It is no more than a statement of common sense. It is saying that discotheques of a certain type, of which 348 Discotheque is one, are well known as places where drugs are sold or supplied. In this particular case the submission is further diluted by the agreed fact that the applicant had parked his car in order to enter the 348 Discotheque which was the very place that he had first met his own supplier, Ah Wai, and who he had met there on many occasions subsequently. In the light of such evidence the judge was plainly entitled to conclude that the applicant was on his way to a place where cocaine trafficking took place and further that because of the number of packets, their value and the form of their packaging he was going there for that very purpose. AUTONUMOUT There is no merit in this ground either. AUTONUMOUT The application is dismissed. AUTONUMOUT Finally, we note that this case concerned the freebase form of cocaine known as crack cocaine which is particularly suitable for ingestion by smoking. This court regards the trafficking of crack cocaine as, potentially, an aggravating feature and in future cases it would be helpful, if indeed crack cocaine is more dangerous, to have evidence to that effect brought to the court's attention. Dr Cheung's otherwise helpful report, was silent on this particular matter. (M. Stuart-Moore) (M.P. Burrell) (M.A. McMahon) Vice President Judge of the Court of First Instance Judge of the Court of First Instance Ms Grace Chan, SGC of the Department of Justice, for the Respondent Mr Phillip Ross, instructed by Messrs A.M. Mui & Kwan, for the Applicant PAGE - PAGE A B 1udk 1udk &`#\$ <(z&; & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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