

HONG KONG / JUDGMENT

HKSAR v. YEUNG YICK MAN

COURT

Court of First Instance

DECIDED

11 January 2007

CASE / FILE NUMBER

HCMA1005/2006

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bjbj HCMA1005/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 1005 OF 2006 (ON APPEAL FROM TWCC 2095 OF 2006)

BETWEEN HKSAR Respondent and YEUNG YICK MAN (D1) (on convictions, one for dealing with dutiable goods, and one for possession for sale of goods to which a forged trademark had been applied. In a word, this appellant was the driver of a van in which there were about a quarter of a million duty-not-paid cigarettes some of which bore false trademarks.

2. He gave evidence at the trial below. His case was that he did not know the contents of the cartons he was carrying, having been hired legitimately by a lady to transport them. The prosecution's case is that when Customs Officers approached his van, he jumped out and fled. The trial centred on that issue of fact. The magistrate decided it against the appellant rejecting his version of events which did not have him fleeing. Accordingly, by inference, he was sure that the appellant knew what he was carrying as that explained his flight.
3. Today, the appellant raises two issues before me. He acts in person. Firstly, he says that there was a letter handed into the court below at some stage in which it was said that he would not be prosecuted for this offence. Government Counsel who appears today has made inquiries before today's hearing about the matter and he tells me no such letter existed. The nearest he can find of any fact or matter which could be associated with the point raised was that he tells me there was some negotiation about pleas that would be accepted but the negotiations came to nothing.
4. Whatever the nature of what was said or done then, based on what the appellant says today, it does not approach anything that could upset these convictions because these convictions were based on the admissible evidence that was called before the magistrate. There is no proper evidence before me that the prosecution changed their mind but even if they did in these circumstances, it would not upset the conviction.

5. The second matter relates to the woman who the appellant said hired him to drive and transport her cartons. She was separately prosecuted. She pleaded guilty and the appellant tells me that at or about the time of his trial, she had been remanded for a DATC report. He did not call the lady as a witness in his trial and essentially the cornerstone of his appeal today is to argue that the lady can say that he is innocent. Accordingly, I have explored with the appellant why he did not call her as a witness at his trial and, in effect, he said his lawyer did not advise him to, or did not tell him to, even though he had raised with the lawyer the question of calling the witness. He was privately represented by solicitors and counsel.
6. The court is in a difficult position when dealing with a situation like this but questions of the appellant today elicited this: that he had known right from the outset that this lady was a very important witness in his favour and that his lawyer told him though that even without the presence of the witness, there was a high chance that he would be acquitted. He agrees, frankly, that having heard that, he took the decision to proceed without her. Thus, in the end, it was his decision not to call the lady and I am afraid that, since that is the case, he has no ground to upset these convictions today because she was not called.
7. Our criminal system cannot run on a basis where in a trial at first instance you make a decision not to call witnesses but when you lose, change your mind and seek to go back to the beginning and have a retrial or have the witness called again now. The system cannot run like that.
8. Accordingly, there is nothing in the absence of that lady witness that could allow me to upset these convictions. The statement of findings prepared by the magistrate sets out in detail his reasoning on the facts and he gives good reasons for the conclusions he drew. He had the advantage of seeing and hearing the witnesses and I can see nothing wrong at all with his findings.
9. Accordingly, on the evidence before the magistrate and now before me, I confirm the two convictions and so dismiss the appeals against them. (P Line) Deputy High Court Judge Mr W T Chiu, Government Counsel, of Department of Justice, for Respondent Appellant, Yeung Yick Man in person PAGE - PAGE CRT28/11.1.2007/MMcG HCMA1005/2006/Reasons for Judgment A B C D E F G H 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 A B C D E F G H I J K L M N O P Q R S T U V &`#\$ JUDGE.DOT setup Microsoft Word 9.0 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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