

HONG KONG / JUDGMENT

HKSAR v. YIP FOOK HUNG

COURT

Court of First Instance

DECIDED

14 February 2007

CASE / FILE NUMBER

HCMA84/2007

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bjbj HCMA 84/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 84 OF 2007

HKSAR and YIP Fook-hung

Before: Hon Wright, J., in Court Date of Hearing: 14 February 2007 Date of Judgment: 14 February
2007

JUDGMENT

The appellant appeals his conviction, after trial, on an information laid by way of summons alleging an offence contrary to ss. 9A(2) and 23(2) of the Public Cleansing and Prevention of Nuisances Regulations made under the Public Health and Municipal Services Ordinance, Cap. 132, that he was the registered owner of a specified vehicle from which litter, a cigarette, was deposited on a road surface. The magistrate succinctly summarised the evidence that was before him in this manner: PW1 gave evidence that on 19 April, Wednesday, at 2.20pm he was walking to a bus stop in Prince Edward Road East. He is a police officer and was off duty at the time of the incident. He said when he was about to cross King Tai Street, he waited at the safety platform. On his left he saw a private car LR5138 driving towards him, so he remained where he was. He said when it was in front of him, it stopped to turn left into Prince Edward Road East. He said that the driver casually used his right hand to throw the cigarette onto the road. The officer was 1.5 to 2 metres away. He said he immediately noted down the registration number of the car, LR5138, in his notebook. When he got home, he filled an FEHD form and faxed it to the Food and Environmental Hygiene Department. The certificate of particulars of the vehicle, dated 27 April 2006, shows the defendant as the registered owner of the vehicle. In cross-examination PW1 was adamant he had made no mistake about the registration number of the vehicle concerned. The

defendant elected to give evidence. He told the court that he is the owner of the vehicle LR 5138, but at the relevant time it was at a car park. He agreed that when he received the registered letter informing that he was to be prosecuted for this matter, he went to the FEHD. He never mentioned to the department that his car was parked at the car park. This matter turned on the credibility of the witnesses. The magistrate has the advantage, which I do not, of having seen and heard them when they testified. In this connection he said I found PW1 to be a reliable and credible witness. I was satisfied that on the day in question he saw the vehicle LR5138 as he described to the court. I took into account the [sic] he picked out the wrong vehicle in the photographs shown to him. At the time of the incident he noted only the colour and registration number of the vehicle, not the precise type or make of car. The two cars shown in photographs 1 to 4 are very similar. The rear seats in the defendant's car can be folded down. PW1 was being asked 8 months after the event to recall the precise type of vehicle concerned. At the time of the offence he immediately noted the registration number of the vehicle concerned in his police notebook having observed the vehicle from 1.5 to 2 metres. Obviously having seen the litter being deposited his attention would be concentrated on getting the registration number rather than on the precise type and make of vehicle. I considered the evidence of the defendant. He had a clear record, which is relevant to his credibility and propensity. I did not believe that at the relevant time his vehicle was parked as he maintained. The appellant's claim at trial, but not when initially approached by the prosecuting authorities, that the vehicle concerned was parked in a garage at the time of the offence connotes either an error or dishonesty on the part of the PW1. That is the real issue in this matter not whether, months after the event, PW1 was able to recall the make of the vehicle involved. The magistrate had before him a trained observer, an off duty police officer, who witnessed an minor incident which occurred between 1.5 and 2 m away from him: he immediately wrote down the basic particulars of the vehicle in respect of which the offence was committed and made a report concerning that vehicle the same day. The magistrate was satisfied, and entitled to be so, that PW1 neither erred nor was dishonest. The appellant was correctly convicted. The appeal is dismissed. (A R WRIGHT) Judge of the Court of First Instance High Court Ms Janice Kwan, Government Counsel of the Department of Justice, for the HKSAR Appellant in person. PAGE 1udk 1udk i\$&8 EnS< EnS< HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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