

HONG KONG / JUDGMENT

LI SIU HING v. HKSAR

COURT

Court of Final Appeal

DECIDED

20 September 2007

CASE / FILE NUMBER

FAMC32/2007

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bjbj FAMC No. 32 of 2007 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO. 32 OF 2007 (Criminal) (ON APPLICATION FOR LEAVE TO APPEAL FROM CACC No. 119 of 2006)

Between: LI SIU HING Applicant

- and - HKSAR Respondent

Appeal Committee: Chief Justice Li, Mr Justice Chan PJ and Mr Justice Ribeiro PJ Date of Hearing: 20 September 2007 Date of Determination: 20 September 2007

DETERMINATION

Mr Justice Ribeiro PJ: The applicant was found by the police to have had in his possession a quantity of in a cigarette box. When an officer remarked that it was , the applicant replied (in translation): t it Blue Tablet (t, he believed that the drugs had been obtained under medical prescription. He accepted that he had not said anything about a doctor s prescription at the time of his arrest. The trial judge, Deputy High Court Judge M Poon instructed the jury that they were not entitled to infer guilt or to draw an adverse inference simply because the applicant had not mentioned the medical certificate at an early stage. Her Ladyship continued (in translation): However, you can use the explanation of the defendant on why he didn t mention the medical certificate on the site to decide what importance you should attach to this statement and see whether such an explanation can help you to decide whether his statement that be believed there should be a medical certificate for the Blue Elf is reliable or not. The applicant objects to that direction on the ground that it violates his constitutionally protected right of silence. In HKSAR v Lee Fuk Hing, the Court stressed the importance of safeguarding the right of silence and held that it was wrong, particularly after a caution had been administered, to risk inferences of guilt

or adverse inferences being drawn against a defendant on the basis that his line of defence had only first been mentioned at a late stage. However, the Court drew a distinction between cases where the accused exercises his right of silence and cases where he makes statements which expose him to cross-examination as to their inconsistency. Mr Justice Mortimer NPJ stated: We may add that, of course, if an accused person makes a statement to the police (under caution or otherwise) which is inconsistent with his defence which can be fairly criticized on other grounds it is open to the prosecution to cross examine and comment upon that statement and its relevance to the defence. The judge may also invite the jury to draw relevant and fair inferences even if they are adverse to the accused. The present case plainly falls within this category of inconsistent statements and involves no violation of the applicant's right of silence. It is not reasonably arguable that there has any substantial and grave injustice to the applicant. The application is accordingly dismissed. (Andrew Li) (Patrick Chan) (R A V Ribeiro) Chief Justice Permanent Judge Permanent Judge Mr Wong Hay Yiu (instructed by Messrs Tsang, Chan & Woo and assigned by the Legal Aid Department) for the applicant Ms Mary Sin (of the Department of Justice) for the respondent Court of Appeal judgment

(2004) 7 HKCFAR 600. At 622, 57. PAGE X (# X (# V` ]#& GF@% bt 0 roL& V.IT ,.5X jM[& \$/h& t|u& U)gy GF@% V.IT U)gy bt 0 ,.5X V`]# Normal.dot setup Microsoft Word 9.0 ^uxX Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 25 October 2026 · Esheria