

HONG KONG / JUDGMENT

LIU WAI SHUN v. HKSAR

COURT

Court of Final Appeal

DECIDED

27 September 2004

CASE / FILE NUMBER

FAMC30/2004

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FAMC No. 30 of 2004 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION miscellaneous proceedings NO. 30 OF 2004 (CRIMINAL) (ON APPLICATION FOR LEAVE TO APPEAL FROM HCMA No. 44 of 2004)

Between: LIU WAI SHUN Applicant

- and - HKSAR Respondent

Appeal Committee: Mr Justice Bokhary PJ, Mr Justice Chan PJ and Mr Justice Ribeiro PJ Date of Hearing: 27 September 2004 Date of Determination: 27 September 2004

DETERMINATION

Mr Justice Ribeiro PJ: The applicant was convicted at the Kwun Tong Magistracy of one count each of obtaining access to a computer with criminal intent [Crimes Ordinance, Cap 200, s 161(1)(a)] and of criminal damage [Crimes Ordinance, Cap 200, s 60(1)]. He was fined \$20,000 and \$15,000 for the respective offences. He had been employed as a software developer and was fired by his employer. The magistrate found it proved that the applicant, in retaliation, deleted some important computer files to prevent the employer, who owned the relevant software, from using it. His appeal to the Court of First Instance was dismissed by Deputy High Court Judge Toh. The Notice of Application for Leave To Appeal suggests that the case raises a point of great general or public importance as follows: Whether, as a matter in criminal proceedings, where the conclusion on who the perpetrator of the crime was, had to be arrived at by way of exclusion, would a doubt which was the incompleteness of the said exclusion be a reasonable doubt (in the *Woolmington v D.P.P.* sense) or a fanciful possibility (in the *Miller v Minister of Pension* sense)? It also puts essentially the same points on the substantial and grave injustice ground. The question as formulated poses a false issue. Guilt was not established merely by exclusion, if that

is taken to mean by identifying the perpetrator through a process of elimination . There was ample positive evidence justifying the conviction. Thus: A computer programme, installed on the applicant's computer as well as a close-circuit television camera had recorded what was being done on the computer and showed the relevant deletions and alterations of the employer's software and data occurring during the half hour or so between the applicant being fired and his leaving the premises. Although he had been told not to touch the computer, he was seen operating it during that time by some other employee. When going down in the lift while leaving the building, the applicant told another employee that he had deleted files and attached an encrypted password to certain files. In a video-recorded interview, the applicant made admissions that he had operated his computer and deleted key files at the relevant time. He had just had a bitter argument with management and had an obvious motive to inflict damage on the software. At the hearing, Mr YC Yeung, for the applicant, advanced submissions which differ from the point apparently contemplated in the formulated question. The applicant did not give evidence but his case, as put in cross-examination and as indicated by a witness he called, was that the deletions and alterations might have been remotely done by someone else using a trojan horse or spyware programme secretly installed in the computer. As I understood him, Mr Yeung sought to argue that the magistrate had failed to exclude the possibility of such other person being responsible for the deletions by remote control. In fact, the magistrate expressly did reject this possibility, finding that there was no evidential basis for that theory. He was perfectly entitled to reject the theory. He found the case proved beyond reasonable doubt. Given the evidence, the only reasonable inference was that the applicant had done the acts in question. The judge quite properly dismissed his appeal. The applicant has no arguable grounds of appeal and this application must therefore be dismissed. We would make one comment regarding sentence. Deliberate damage to computer software and data may of course result in very substantial economic and other harm to organisations using that software and data. The applicant may count himself lucky that the damage inflicted here was remediable largely because of the preventive measures taken by his former employer. The seriousness of the damage inflicted in such a case should properly be reflected in the sentences handed down. If more serious damage had ensued, a fine would not have been a sufficient sentence. We were told that the Court of Appeal has, quite properly in our view, indicated that such cases should ordinarily attract a custodial sentence. (Kemal Bokhary) Permanent Judge (Patrick Chan) Permanent Judge (R A V Ribeiro) Permanent Judge Mr YC Yeung (instructed by Messrs Lam & Lai) for the applicant Mr David Leung, SGC (of the Department of Justice) for the respondent

PAGE (# (# (# X (# X (# V` ]#& 0B(\$ GF@% bt 0 roL& V.IT ,.5X jM[& \$/h& t|u& U)gy GF@% V.IT U)gy bt 0 ,.5X V`]# 0B(\$ FjT\& FAMC No Erica FY Wong Normal.dot setup Microsoft Word 9.0 z~l> z~l> Judiciary Hong Kong FAMC No Title _AdHocReviewCycleID _EmailSubject _AuthorEmail _AuthorEmailDisplayName Determination] rribeiro@netvigator.com Robert Ribeiro Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=43275

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/liu-wai-shun-v-hksar-2004>

Prepared on 28 October 2026 · Esheria