

HONG KONG / JUDGMENT

YEUNG CHI KEUNG v. HKSAR

COURT

Court of Final Appeal

DECIDED

10 December 2007

CASE / FILE NUMBER

FAMC50/2007

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bjbj FAMC No. 50 of 2007 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO. 50 OF 2007 (CRIMINAL) (ON APPLICATION FOR LEAVE TO APPEAL FROM CACC NO. 355 OF 2006)

Between: YEUNG CHI KEUNG Applicant and HONG KONG SPECIAL ADMINISTRATIVE REGION
Respondent

Appeal Committee : Chief Justice Li, Mr Justice Bokhary PJ and Mr Justice Chan PJ Date of Hearing: 10 December 2007 Date of Determination: 10 December 2007 D E T E R M I N A T I O N
Chief Justice Li : On 14 July 2006, the applicant was convicted in the District Court (Judge Whaley) of trafficking in dangerous drugs, namely 34.32 grammes of a solid containing 24.46 grammes of cocaine. He was sentenced to five years and three months imprisonment. In May 2007, the Court of Appeal (Stuart-Moore VP, Burrell J and McMahon J) dismissed his application for leave to appeal. At trial, the applicant did not give evidence and did not call any evidence. The facts, including a video recorded interview of the applicant, were agreed. The applicant had been intercepted carrying 61 packets of the drug with a street value of about \$23,000 after parking his car. The applicant's defence was that he was in possession of the drug for his own consumption. The Judge convicted him of trafficking, holding that to be the only reasonable inference. In seeking leave on the substantial and grave injustice ground, the applicant relies on two matters. First, it is argued that the Judge should not have relied on the expert evidence of Dr Cheung from the Kwai Chung Hospital Substance Abuse Assessment Unit. Dr Cheung's report was admitted by agreement. He stated that the average daily dose for crack cocaine (which the cocaine in question was) was estimated to be 450 milligrams. It is argued that there was no or no sufficient evidence to prove that the daily average dosage of cocaine was in fact Dr Cheung's opinion. This argument is plainly bad. The daily average dosage was based on information from the Centre in question and had been put forward as part Dr Cheung's report. Further, Dr Cheung's report referred to milligrams per day whereas the applicant in his interview had referred to his daily consumption in terms of granules. It is argued that since granule is not a measuring unit and there was no

evidence as to what the applicant meant by a granule, the Judge was wrong to conclude that the applicant was carrying over 50 daily dosages at the material time. This argument is also plainly bad. The Judge was clearly entitled so to conclude on the basis of Dr Cheung's expert evidence. The second matter relied on is this. The Judge stated: 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. It is argued that the Judge was wrong to take such judicial notice. This argument is again unsustainable. As the Court of Appeal pointed out, it is no more than a statement of common sense. The Judge was entitled to take such notice. Further, in relation to Discotheque 348, it was an agreed fact that the applicant had parked his car to enter Discotheque 348 which was the place where he had first met his supplier of drugs and had met him there subsequently on many occasions.

9. There is no arguable case of any substantial and grave injustice. Accordingly, leave to appeal is refused. (Andrew Li) (Kemal Bokhary) (Patrick Chan) Chief Justice Permanent Judge Permanent Judge Mr Cheng Huan SC (instructed by Messrs Haldanes and assigned by the Legal Aid Department) for the applicant Mr Robert S.K. Lee and Ms Grace Chan (of the Department of Justice) for the respondent - PAGE Z; D <G&t zO\b Z; D bxn0 Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 27 October 2026 · Esheria