

## HKSAR v L.F.-C.

### Facts

In May 2009, a Hong Kong (China) resident (A1) approached the airport counter to check in. The hostess delivered to A1 a boarding pass in his name. About the same time, someone also checked in, with the defendant's passport, at a different counter and received the corresponding boarding pass. Later on, Immigration Officers intercepted three mainland residents at the boarding gate of a flight bound for Vancouver (Canada). One of the intercepted individuals showed a forged Hong Kong Special Administrative Region passport and a boarding pass in the name of the defendant. Another mainlander procured a forged Hong Kong Special Administrative Region passport and a boarding pass in the name of a third party. The last of the three individuals produced a forged Hong Kong Special Administrative Region passport and boarding pass in the name of A1. All three mainlanders were arrested. In June 2009, A1 was arrested. In August 2009, the defendant was detained.

The defendant was accused of conspiracy with others to obtain services by deception, in the context of migrant smuggling activities. He pled not guilty. B1, pled guilty and was sentenced accordingly.

### Elements of success

- Due process ensured
- Contextual weighing of testimonies
- Presumption of innocence

### Challenges

- Well-structured criminal plan
- False testimony / Obstruction to justice

### Background

The defendant was the supervisor of A1 and had no prior criminal record. B1 was a work colleague of A1.

B1 had been involved in previous smuggling ventures, which followed a determined pattern:

- Upon arrival at the airport, B1 would pass the Immigration Departure Counter with an irregular migrant. Both would use genuine travel documents and names.
- After passing the Immigration Counter, B1 would enter a toilet where he would leave a magazine containing a passport and a boarding pass of a person who would not board the flight.
- The irregular migrant would then pick up the documents and board the flight to Canada with B1. At the boarding gate, B1 would use his genuine passport and boarding pass. Instead, the irregular migrant would use documents in another person's name.
- Upon arrival in Canada, B1 would separate from the irregular migrant, who would surrender to the Canadian authorities. B1 would then collect the luggage of the person who did not board the flight, destroy the airline tags, enter Canada and stay a few days before returning to Hong Kong.

- Irregular migrants were taught the ‘right’ answers to give were they to be interrogated by authorities.
- A passport could cost 1000 USD and a boarding pass could range up to 4000 USD.

## Key issues

- ❖ Evidence (testimony of accomplices)
- ❖ Presumption of innocence

## Investigation

Authorities relied on documentary (flight and immigration records, boarding passes, fraudulent and authentic passports) and testimonial evidence.

Initially, A1 declared to have been recruited by the defendant to participate in migrant smuggling ventures, in exchange of money fees. According to him, both the defendant and B1 introduced A1 to a person who arranged for the smuggling of mainlanders to Canada. When A1 stated to the defendant that he was short of money and looking for a job, the defendant would have proposed to him to facilitate migrant smuggling towards Canada. The reward would be 15 000 USD. A1 later admitted the defendant always advised him not to engage in illegal dealings. A1 also admitted to have given prior incriminating statements against the defendant out of vengeance given that in 2009 the defendant no longer employed him.

The defendant denied involvement in smuggling activities. He acknowledged that, in May 2009, he had applied for a Hong Kong passport. B1 was a close friend of the defendant. It was on grounds of this relationship that the

defendant entrusted him personal items – including his passport – to deliver at his mother’s house. B1 managed to thus abusively use the passport. B1 apologised to the defendant and acknowledged that the latter was unaware of the smuggling scheme.

## Reasoning

The Prosecution’s case is founded on the testimony of A1, who is an alleged accomplice of, and would have much to gain in incriminating, the defendant, notably a reduction on the sentence. A1’s statements presented a series of contradictions. Furthermore, the fact that the defendant’s passport was used at the airport by an irregular migrant is not sufficient evidence to determine the defendant’s guilt re the migrant smuggling plan.

At the very least, by the end of 2008, A1 had complained seriously re work arrangements. At a minimum, ‘bad blood’ ran between A1 and the defendant from that time on.

The defendant’s position was consistent throughout the proceedings: he had never met A1 in 2009. In addition, the defendant was a man with clear record, an important factor when determining the veracity of his declarations as well as his propensity to committing the crime he was accused of.

The version of events presented by the defendant was fully corroborated by B1, who appeared to have no benefit in supporting the defendant. Indeed, admitting to have stolen the defendant’s passport went against the interest of B1.

The fact that B1 lied to both Canadian Immigration and Hong Kong Immigration Services - whilst reprehensible – is, in the circumstances, hardly surprising and not sufficient to undermine his credibility on material points.

It remains true that, being good friends, B1 could be sacrificing himself in order to exonerate the defendant. Yet, this is precisely what it is: a possibility. The circumstances may be suspicious but mere suspicion cannot lead to a conviction.

## **Verdict/Decision**

The defendant was acquitted.

## **Opinion**

This case lies significantly on testimonial evidence. It is illustrative of the delicate checks and balances a court of law must ensure and how the presumption of innocence shall prevail in case of doubt.