

Chong Jiajun Eugene v Public Prosecutor
[2015] SGHC 285

Case Number : Magistrate's Appeal No 65 of 2015
Decision Date : 03 November 2015
Tribunal/Court : High Court
Coram : See Kee Oon JC
Counsel Name(s) : Patrick Chin Meng Liong (Chin Patrick & Co) for the appellant; Lin Yinbing and Michelle Lu Wei Yi (Attorney-General's Chambers) for the respondent.
Parties : Chong Jiajun Eugene — Public Prosecutor

Criminal Law – Statutory offences – Road Traffic Act – Exhibiting a false vehicle licence plate – Whether custodial sentence warranted

3 November 2015

See Kee Oon JC:

1 The material facts of this case are straightforward. The then 23-year-old appellant had rented a Ferrari 360 Modena F1 sports car (“the car”) from Ace Drive Car Rental for under a week. It carried the vehicle licence plate number SKD2284H. He chose to affix another vehicle’s licence plate number SQ1H onto the car instead, using 3M double-sided tape.

2 On 19 March 2013, the appellant was stopped at random by an enforcement officer from the Land Transport Authority (“LTA”) while driving the car and investigations subsequently revealed that he had exhibited a false licence plate. The licence plate SQ1H belonged to another car, a Mercedes Benz E200. The appellant had picked it out from a website of “special” car plate numbers and he did not know the owner of the car.

3 The appellant was thus charged under s 129(2)(d) of the Road Traffic Act (Cap 276, 2004 Rev Ed) (“the Act”), an offence punishable under s 129(2)(iii) of the Act. For convenient reference, I reproduce the relevant provision of the Act:

False statements, forging of licences, etc.

129.—(2) If any person –

...

(d) exhibits upon any vehicle or trailer any licence or identification mark, plate or document which has been forged, altered, defaced, mutilated or added to or any colourable imitation of a licence, mark, plate or document which is required under this Act to be carried on a vehicle or trailer; ...

he shall, unless he establishes to the satisfaction of the court that he acted without intent to deceive, be guilty of an offence and shall be liable on conviction to be punished ...

...

(iii) ... with a fine not exceeding \$5,000 or with imprisonment for a term not exceeding 12 months or with both.

4 The appellant elected to plead guilty to the charge and he was sentenced by the court below to two weeks' imprisonment. The District Judge in her grounds of decision (published as *Public Prosecutor v Chong Jiajun Eugene* [2015] SGDC 142) emphasised that a custodial sentence was necessary to deter such offences, citing the difficulty in detecting them and the heavy burden on the resources of enforcement agencies, as well as the potential inconvenience and harm that might be caused to other road users. She further noted that the appellant had given two different explanations for why he had decided to affix the false licence plate on the car.

5 Upon hearing the submissions of the respective parties on appeal, I allowed the appeal and set aside the sentence of imprisonment and substituted it with a fine of \$5,000, in default two weeks' imprisonment. I now set out my grounds for my decision.

The appellant's contentions

6 On appeal, counsel for the appellant accepted that deception is inherent in such offences, and agreed that the District Judge was not wrong to have regard to the "not inconsiderable" potential harm that might be caused should traffic or other violations occur. Nevertheless, he submitted that an aggravating feature must exist to warrant a custodial term. This might take the form of evidence of some other circumstance or particular act or acts of deception, such as a collateral purpose in using the false licence plate, *eg*, to evade Electronic Road Pricing ("ERP") charges (as was the case in *Public Prosecutor v Tan Wei Jin* [2010] SGDC 216 ("*Tan Wei Jin*"). Even then the High Court had found in dealing with the appeal in *Public Prosecutor v Chua Chee Hou* [2012] SGDC 89 ("*Chua Chee Hou*") (Magistrate's Appeal No 61 of 2012) that a fine would suffice on the facts, where the appellant affixed a false licence plate on the car in question so that he could reuse a season parking ticket and avoid payment of parking charges.

7 The key plank of counsel's submission was that there was no discernible dishonesty or deception equivalent to that demonstrated in the cases cited before the District Judge. The appellant's motive should have been accorded due consideration in determining the appropriate sentence, given that there was no evidence of any violation of other laws. The car was rented for less than a week, and all the appellant wanted to do was to "feel rich" in the car, and "look good" posing for a photo shoot with the false licence plate number SQ1H, which was a "golden number". There was no other sinister motive and no basis to assume that he had some other nefarious or unlawful aims in mind. It was thus submitted that the District Judge had erred in summarily dismissing his reasons.

The prosecution's submissions

8 In response to the appellant's submission, the Deputy Public Prosecutor ("DPP") countered that public policy considerations would require a deterrent sentence for such offences. Sentencing precedents show that the starting point would be a custodial sentence. There was potential harm in each offence, and innocent parties might be affected and resources would need to be expended to trace the actual offender if there were to be any traffic violations involving the car.

9 The DPP submitted that the very act of fixing a false number plate by itself involved deception. In response to the court's query, the DPP clarified that the offence in question was detected at random and there was no evidence of any traffic or other violations committed by the appellant. Nonetheless, the DPP took issue with the appellant's stated motives and submitted that his

explanations of preparing for a photo shoot and wanting to “feel rich” by driving the car with the false licence plate were not consistent and thus did not merit consideration.

10 The DPP further submitted that offenders could easily come up with unsubstantiated justifications. Such offences were also very difficult to detect. She suggested that the appropriate sentence should be pegged to *Tan Wei Jin*. In that case, the appellant chose to withdraw his appeal against a two-week jail term, and had offered an unsubstantiated motive for affixing the false licence plate, ostensibly to follow his father whom he suspected of having an affair. The District Judge in *Tan Wei Jin* had also agreed that there was evidence of premeditation to evade detection including for non-payment of the ERP charges.

11 As for *Chua Chee Hou*, the DPP highlighted that he was caught evading parking charges by reusing a season parking ticket issued for another vehicle, and affixing the licence plate for that vehicle to the car in question. No grounds of judgment were issued by the High Court in allowing the appeal and substituting the jail term with a fine of \$3,000. The DPP suggested that the High Court might have been influenced by the fact that the appellant was not driving on the road with the car, as the car was brought to the appellant’s workshop for long-term repairs.

My decision

The mischief targeted by the provision

12 What is the true mischief targeted by s 129(2)(d) of the Act in relation to such offending conduct involving affixing another licence plate number to a vehicle? As a starting point, there must of course be “intent to deceive” since s 129(2) states that if it can be shown to the court’s satisfaction that there was no such intent, no offence would be disclosed. The pivotal enquiry relates to the purpose for which this deception was being practised. In my view, this enquiry leads to the logical conclusion that the mischief of the provision would be to deal with cases where licence plates are fraudulently switched or attached in order to facilitate the commission of some other offence. The use of another licence plate is plainly motivated in such circumstances by the desire to avoid detection and thwart enforcement or investigation efforts. There was however no evidence whatsoever of any such motive in the present case.

13 I accept that deception is inherent in the offence, and such offences are indeed difficult to detect. I also agree entirely with the District Judge that there is “not inconsiderable” potential harm that might result. An obvious example will be if the driver is involved in some other traffic violation or a serious road accident. It may mean that innocent third parties become inconvenienced by the resulting investigations. They could be seriously prejudiced since third-party insurance claims could be frustrated, and the driver may well not even be insured. Moreover, enforcement actions, if any, can be hampered or slowed down by further checks and verification that would be required to ascertain the actual licence plate number. These are all relevant considerations. But there was once again plainly no evidence of any actual harm or inconvenience in the present case. More importantly, there was no evidence put forth of any intent to cause such potential harm or inconvenience.

The relevance of motive and the prosecution’s submission on sentence

14 I turn next to the different explanations the appellant appeared to have put forward before the District Judge for his conduct. She was not impressed by his explanations, which she found to be both “puzzling” and “unsubstantiated”, although it is not clear if she had rejected both explanations outright. Nevertheless even if his motives could be said to be inconsistent (and I do not necessarily agree they are), I did not think this would by itself tip the scales towards a custodial term when his

motives appear to be quite innocent.

15 There was no basis in my view to conclude that these must be unsubstantiated and hence *prima facie* unacceptable motives when the prosecution had adduced no evidence to contradict his explanations. They appeared to be plausible reasons for such conduct. From his explanations, he acknowledged that he was an attention-seeking young man, whose age belies his immaturity and fatuousness. He was simply intent on showing off, driven by the desire to “feel rich” behind the wheel of a flashy rented sports car. He wanted to be seen in (or with) the car with a “golden number” rather than the uninspiring “plain vanilla” number that came with the car itself. That is not palpably inconsistent with the explanation he first gave to the District Judge that he rented the car to pose with it at a photo shoot that he was helping his friend with. They may be separate and even unrelated reasons. Some may even form the view that they are frivolous reasons, but they were not necessarily inconsistent or inherently incredible explanations.

16 With respect, the District Judge may have placed undue reliance on his differing reasons, almost as if his inability to keep to a consistent explanation had aggravated the offence. In any event, his explanations themselves were clearly not aggravating factors, despite a thinly-veiled attempt by the Prosecuting Officer to suggest this in the written submission tendered before the District Judge seeking a custodial sentence. At paragraph five of the prosecution’s submission on sentence marked as ‘P1’, it was contended that “[s]uch circumstances are further aggravated by the fact that the defendant, for such triviality as to “look good” for his photoshoot, by replacing the number plates with the forged ones, also avoidance [*sic*] in a form of receiving the parking summons, ERP detection or other road related offences”. I did not see the relevance of the perceived “triviality” of his stated reason – it may have been trivial or frivolous, but this was by itself no reason to suggest it was therefore patently and objectively unbelievable and had somehow made his offence more aggravated. As for the possible avoidance of detection, I reiterate that there was no evidence of any such motives in the present case.

17 It was also inappropriate for the prosecution to maintain that matters were “compounded” and enforcement officers would be further “inconvenienced”. With respect, this appears to overstate the position. These considerations had no application at all to the facts in the present case. There was certainly no evidence of such inconvenience in terms of detection in the present case. He was not caught for some other offence for which he was attempting to avoid detection; the facts show that the offence was detected at random when he was stopped by a LTA officer.

Calibration of the sentence

1 8 *Chua Chee Hou* illustrates why the mischief targeted by the provision should be carefully examined to determine whether the factual scenario at hand falls squarely within it. Although there were no written grounds of judgment issued, it would appear that the offender’s primary motive was to “reuse” the season parking label which was issued for use on another car. He could perhaps still have driven the car in question although it was undergoing repairs. At any rate there was no evidence that the car would not or could not be driven. But nonetheless the High Court’s decision to set aside the imprisonment term and substitute it with a fine would demonstrate that even with a motive to avoid incurring additional season parking charges for the car, his culpability fell within the lower end of the spectrum. A high fine would thus be an adequate deterrent punishment.

19 In the present case, the offence was planned and premeditated. But it seems to me that every such offence of this nature would necessarily be so. As such, this is not an additional aggravating feature. It is implicit in the offence itself – I cannot see how someone could have chosen to affix a false number plate without conscious planning and deliberation. There was no evidence that the

appellant had planned for long-term use of the number plate. After all, it was a rented car which he would use for less than a week.

20 More critically, there was no evidence of any other unlawful intent, *eg*, avoidance of parking summons or parking charges, ERP or road-related offences. There was no other violation. There was, for instance, no evidence that he did not insert a cashcard into his in-vehicle unit or that he did not display parking coupons or that he did not provide the actual car number after being involved in a car accident. There was no evidence that he was not insured. I reiterate that he was simply stopped at random by an LTA enforcement officer. It would therefore not be appropriate to overstate the potential harm that might be occasioned in such circumstances, although I would readily accept that this is a relevant consideration even if it is necessarily also a somewhat speculative one.

21 It was of course entirely possible that in actual fact the appellant may have had various other reasons for affixing the licence plate number SQ1H onto the car. He was by his own admission a young man seeking to show off driving a rented sports car. It would not be implausible that he might have wanted to avoid detection should he be caught speeding or spotted driving recklessly or participating in an illegal road race. But to ascribe such a motive to him would be wholly speculative and unfair to him when no such evidence was before the court.

22 It would in fact be very likely that, in other cases, false number plates are affixed in order to facilitate the commission of other offences. I would emphasise that a custodial term is still warranted in such cases. Imprisonment of two weeks upwards should be expected even if they may be relatively minor offences such as evasion of ERP, and I would venture to suggest that a longer term in the range of four weeks would be appropriate where there is non-payment of road tax and/or insurance. There will also be aggravated offences for which more substantial sentences of imprisonment would be warranted, such as where false number plates are used on stolen cars or to facilitate the commission of more serious offences like drug trafficking, robbery, immigration or customs offences, to name just a few. In such cases, the intent to evade detection is manifestly clear and the starting point for the sentencing court would be to consider a sentence of three months' imprisonment upwards.

23 I make one final brief observation: the prosecution included among its sentencing authorities a newspaper article from August 2010 reporting the case of *Tan Wei Jin*. Newspaper reports are widely referred to by the general public as sources of news and information but they are hearsay and generally not reliable sources for the court to rely on.

Conclusion

24 I was of the view that a custodial sentence would not be warranted given the circumstances under which the offence was committed. In line with the High Court's decision in *Chua Chee Hou*, the maximum fine would be adequate punishment on the facts of this case. In my opinion, while a custodial sentence would ordinarily still be warranted, the factual circumstances in both cases were not such that they plainly fell within the mischief envisaged by the relevant provision of the Act. I therefore allowed the appeal and substituted the imprisonment term of two weeks with a fine of \$5,000, in default two weeks' imprisonment.

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