

Case Summary

HKSAR

v

Kwok Man Hei (A2/D2 in HCCC 103/2022)

Ho Yu Wang (A1/D3 in HCCC 104/2022)

Cheung Ho Yeung (A1/D8 in HCCC 127/2023)

HCCC 103/2022; HCCC 104/2022; HCCC 127/2023 (Heard together)

[2024] HKCFI 280

(Court of First Instance)

(Transcript of the Audio Recording of the Court's reasons

for sentence in English at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=157698&QS=%28%5B2024%5D%7CHKCFI%7C280%29&TP=RS)

Before: Hon Alex Lee J

Date of Sentence: 28 December 2023

Sentence – “Returning Valiant” – plan to bomb courts buildings – conspiracy to commit terrorist activities – NSL 24 and ss. 159A and 159C of Crimes Ordinance (Cap 200) – persistent, deep and well-thought through plan – not mere impulsion – may be sentenced to more than 10 years’ imprisonment if agreed course of conduct was serious but not successfully executed

Background

1. The three Defendants, along with four others, were jointly charged with: (1) one charge of “conspiracy to commit terrorist activities”,

contrary to NSL 24 and ss. 159A and 159C of the Crimes Ordinance, Cap. 200 (“Charge 1”); and (2) an alternative charge of “conspiracy to cause explosions likely to endanger life or property”, contrary to ss. 54(a), 159A and 159C of the Crimes Ordinance (“Charge 2”). (counters R-U, p. 1 and counters A-D, p. 2)

2. D1 to D7 were arrested first for the charges. D8 was originally not a defendant but a prosecution witness listed for the trial of D1. Eventually, the prosecution decided not to proceed with the case against D1 but changed D8’s status from prosecution witness to an accused. (counters E-I, p. 3)

3. In the event, D3 pleaded guilty to Charge 1 and the rest of the defendants (D2 and D4 to D8) pleaded guilty to Charge 2. The Court sentenced D4 to D7 in one occasion on 23 May 2023 (counters P-S, p. 2 and counters A-C, p. 3) and the sentence of D2 and D3 was adjourned to 28 December 2023 to be dealt along with the case of D8, i.e. this present case. (counters Q-R, p. 3)

Summary of the Court’s reasons for sentence

Background

4. This case concerned the criminal activities of a group of people who called themselves “光城者” (“Returning Valiant”). D1 and D2 were members of the Returning Valiant and they were in a relationship. D8 belonged to another local political group called “賢學施政” (“Student Politicism”); he later on withdrew from Student Politicism. (counters R-S, p. 1 and counters O-R, p. 4)

5. D1 and D2 met with D8 and other people on several occasions to discuss plans of causing explosions at various places in Hong Kong. D8 told them that he had plan to escalate his action against the

government through more radical means, targeting government offices, police quarters and court buildings, in order to attract support and funds from other political groups or activists. D8 asked D1 and D2 to join him and help recruit other persons. (counters B-C, M-U, p. 5 and counter A, p. 6)

6. D3 told D2 that he had founded a radical political group called “佚名” (“Black Bloc”) which had a base in the UK and that Black Bloc was planning to do something big in Hong Kong. D2 told D8 that there was a person who planned to make bombs and suggested putting D8 through to D3. (counters C-F, p. 5 and counters A-B, p. 6)

7. Afterwards, D3 contacted D8 and told D8 about his (i.e. D3’s) bombing plan to bomb court buildings, namely Tuen Mun and Kwun Tong Law Courts Buildings (“the Plan”). D8 undertook to assist by providing funds for buying the necessary equipment, conducting inspection of target premises, recruiting others to execute the Plan and helping D3 leave Hong Kong after execution of the Plan. D8 sent D3 information on making triacetone triperoxide (“TATP”) and gave D3 HK\$40,000 in cash. (counters C-G, p. 6)

8. D3 and D4 rented a room in a guesthouse in Tsim Sha Tsui (“the Room”). They resided there for about a month where they planned and prepared for the manufacture of homemade high explosives and construction of viable improvised explosive devices. Police found from the Room, *inter alia*, the following items: (counters M-U, p. 7 and counters A-L, p. 8)

- (a) D3’s notebook and papers containing information pertaining to a plan of damaging the stable structure of Hong Kong (破壞香港之穩定結構); intensifying the contradiction between the Chinese Communist Party and various groups (促進中共與各方的矛盾); triggering a domino effect (嘗試引發骨牌效應); and

making use of the opportunity to establish a resistance organisation afterwards (事後順水推舟建立反抗組織);

- (b) A floor directory and a sketch of the Kwun Tong Law Courts Building;
- (c) Information about the vicinity of Kwun Tong Magistracy and Tuen Mun Magistracy which could be served as observation posts and escape routes;
- (d) Estimation of the travelling time from the courts buildings to the airport; and
- (e) Apparatus, laboratory equipment and other materials which could be used for manufacturing or placement of explosive substances.

9. D3 recruited about a dozen others, including D7 and D5, who brought along D6, to act in various roles to carry out the Plan in return for a monetary reward:

- (a) D3, D4 and D5 conducted reconnaissance at and in the vicinity of the Tun Mun and Kwun Tong Law Courts Buildings. (counters C-O, p. 9)
- (b) A classmate of D3 and D4 was tasked to be a carrier. She was given a Nokia mobile phone as a “burner”. (counters M-T, p. 8 and counters A-C, p. 9)
- (c) D3 gave D5 specific and detailed instructions on planting two bombs at different locations in the Kwun Tong Law Courts Building. D5 was to detonate the bombs remotely from a phone. Arrangement would be made for D5 to escape to the UK. (counters O-T, p. 9)
- (d) D3 told D5 that if the bomb did not go off, the fall back plan was to ask D6 to physically trigger the bomb without letting him know. D5 objected but D3 said that casualties would be inevitable if they were to do something big (做大事一定會有人犧牲) and that “We get dirty, but the world stay clean” (污糟嘢

總要有人要做), that they would become famous and were doing it to establish the name of an organisation to be established after the execution of the Plan and called “浮城”. (counters A-F, p. 10)

- (e) D7 was tasked to source hydrogen peroxide and hydrochloric acid to manufacture TATP (counters F-K, p. 10)

10. In early July 2021, D3 told D8 that the Plan had to be indefinitely postponed because the latter was being followed by the police. The Defendants were subsequently arrested. (counters R-S, p. 6 and counters H-I, p. 7)

Sentencing considerations

11. The Court accepted that the hostile social atmosphere in 2019 and 2020 could cloud people’s moral judgement and the corrosive nature of the whole event might have turned some ordinarily harmless people with previous good characters into radicals. However, the Plan was without any doubt an evil one. The Defendants were determined to achieve their ends regardless of the means. In the case of D3 and D8, their respective involvements in the Plan were persistent, deep and well-thought through such that their offences could not be brushed aside as mere impulsive acts committed at the heat of the moment. (counters L-R, p. 11)

(a) D3

12. The offence D3 committed was serious in that: (counters D-M, p. 12)

- (a) He was the mastermind of the Plan.
- (b) He recruited other people in the execution of the offence and as the ringleader of D4 to D7.

- (c) He took steps to carry out the Plan.
- (d) The offence took place against the backdrop of a social unrest in Hong Kong, what D3 intended to do would have caused the societal condition to change from bad to worse.
- (e) He displayed wanton disregard to the rule of law by choosing court premises as his targets.
- (f) By the degree and extent of his planning and the steps he had taken in implementing the Plan, he was determined to cause damage and bring chaos to Hong Kong.
- (g) He was callous to the harm which other people might suffer as a result.
- (h) His action came close to declaring war on society, the government, and the court, and members of the public were exposed to terrible risks.

13. The Court did not accept the submission that D3's sentence could not be more than 10 years' imprisonment just because his offence had yet to cause serious bodily injury or significant property loss. That argument ignored the fact that the charge was one of conspiracy, the gravamen of which was the making of the agreement to commit the offence rather than the commission of the offence. If D3's argument were right, then it would lead to the surprising result that an accused charged with a conspiracy to commit an NSL 24 offence could never be sentenced to more than 10 years' imprisonment, no matter how serious the agreed course of conduct was intended to be unless it had been successfully executed. That, in the Court's view, cannot be the legislative intent behind NSL. (counters E-L, p. 13)

14. Taking into consideration of all circumstances, including the absence of personal injury or property loss and D3's age (17 years at the time of the offence), the Court adopted 10 years' imprisonment as the starting point of D3's sentence. (counters M-Q, p. 13)

15. In view of D3's timely plea and his assistance given to the police, particularly in the case against D8, the Court exercised its discretion to make a discount of 4 years. Therefore, D3 was sentenced to 6 years' imprisonment. (counters R-T, p. 13 and counters A-D, p. 14)

(b) Charge 2: D2 and D8

16. Charge 2 which D2 and D8 pleaded guilty to, carried a maximum sentence of 20 years' imprisonment. Given the local environment and the prevailing social setting in which the offence took place, the actual sentences imposed in foreign cases were not directly applicable to Hong Kong. What would be appropriate had to be fact specific. (counters E-K, p. 14)

17. The Court pointed out that despite the fact that the offence did not lead to any casualties or damages, the only sentencing option appropriate in their respective cases is a substantial term of imprisonment, given the following:

- (1) the societal condition at the time of the offence;
- (2) whilst a distinction could probably be drawn between planting an explosive device with the primary purpose of endangering life and doing so with the primary purpose of causing damage to property, in the present case, the defendants' objective was to destabilise the community and they were at least reckless as to the number of people who might be killed or maimed as a consequence of the bombing; and
- (3) similar to the case of D3, what D2 and D8 conspired to do came close to declaring war on society, the government and the court, and members of the public were exposed to terrible risk.

(c) D2

18. The Court accepted that D2's role in the conspiracy was limited to bringing D3 and D8 together knowing that the two intended to make and

place bombs at court buildings. The Court adopted 5 1/2 years' imprisonment as the starting point of D2's sentence. (counters F-I, p. 15)

19. The only factors that could reduce D2's sentence were her guilty plea and her assistance to the police. As D2 only agreed with the prosecution on her plea before listing, the Court granted a reduction of 18 months for her plea. A further reduction of 7 months was granted for her assistance provided in the case against D8. (counters N-T, p. 15)

20. D2 was already serving a Training Centre Order due to a previous NSL case which overlapped with the dates of the present case. Taking into account the issue of totality, the Court deducted another 11 months. Therefore, D2 was sentenced to a total of 30 months' imprisonment. The Training Centre Order she was serving ceased to have effect. (counters A-I, p. 16)

(d) D8

21. The Court found D8 more culpable than D2 and adopted 8 years' imprisonment as the starting point of his sentence, given the following: (counters K-S, p. 16)

- (a) He provided finance for D3.
- (b) He agreed to help D3 recruit others for the execution of the Plan and he admitted to have taken real action.
- (c) He sent information on how to make TATP to D3. This act calls for deterrence in the sentencing process as researching explosive substances was one step away from making them and another step away from using them.
- (d) He was a university student and older than D2 and D3; he should have known better.
- (e) But for his involvement and encouragement, D3's plan might have remained only a plan.

(f) His course of conduct, which spanned a lengthy period of time and involved careful planning and liaising with other people, was no mere impulsive act.

22. D8's sentence was reduced from 8 years' to 6 years' imprisonment for his guilty plea after committal but before listing. The Court found D8's information to the prosecution misleading; he was trying to downplay his role in the offence. As such, D8 was not entitled to any further reduction in sentence, therefore, 6 years' imprisonment. (counters R-U, p. 16 and counters A-D, p. 17)

#611290v5