

Case Summary (English Translation)

HKSAR v Chan Sze Lok (陳思諾) and three others

DCCC 1016/2022; [2024] HKDC 438

(District Court)

(Full text of the Court's reasons for sentence in Chinese at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=159246&QS=%2B&TP=RS)

Before: HH Judge E. Lin

Date: 29 February 2024

Sentencing – conspiracy to wound with intent – ss. 159A and 159C of the Crimes Ordinance – conspiracy to do an act or acts with a seditious intention – s. 10(1)(a) of the Crimes Ordinance – criminal liability for an offence of conspiracy equivalent to that for its substantive offence – sentencing factors – using Internet to protest/oppose the Government's epidemic prevention measures – inciting others to undermine by force governance of the Government – youth no excuse to exonerate oneself from liability for prior wanton behaviours

Background

1. The case involved five defendants who were jointly charged with one count of “conspiracy to wound with intent”, contrary to s. 17(a) of the Offences against the Person Ordinance, Cap. 212, and ss. 159A and 159C of the Crimes Ordinance, Cap. 200 (i.e. Charge 1).

2. In addition, the following defendants were each charged with the other offences as follows:

- (a) the first defendant (“D1”) individually: “doing an act or acts with a seditious intention”, contrary to s. 10(1)(a) of the Crimes Ordinance, Cap. 200 (i.e. Charge 5) and “possession of an

offensive weapon”, contrary to s. 33 of the Public Order Ordinance, Cap. 245 (i.e. Charge 2);

(b) the second defendant (“D2”): “conspiracy to do an act or acts with a seditious intention”, contrary to s. 10(1)(a) of the Crimes Ordinance, Cap. 200, and ss. 159A and 159C of the Crimes Ordinance, Cap. 200 (i.e. Charge 6); and

(c) the third defendant (“D3”): “possession of a dangerous drug”, contrary to s. 8 of the Dangerous Drugs Ordinance, Cap. 134 (i.e. Charge 3), “possession of arms and ammunition without licence”, contrary to s. 13 of the Firearms and Ammunition Ordinance, Cap. 238 (i.e. Charge 4) and “conspiracy to do an act or acts with a seditious intention”, contrary to s. 10(1)(a) of the Crimes Ordinance, Cap. 200, and ss. 159A and 159C of the Crimes Ordinance, Cap. 200 (i.e. Charge 6).

3. On Charge 1, D4 pleaded not guilty and was acquitted by the Court after trial due to insufficient evidence, whereas the remaining four defendants were convicted by the Court upon their own guilty pleas and admission of the facts. (para. 2)

4. D1 pleaded not guilty to Charge 2 but pleaded guilty to Charge 5. The Court found him guilty of Charge 5, and given D1’s conviction of Charge 1 and Charge 5, the Court allowed the Prosecution’s application to leave Charge 2 on the court file and not to be proceeded with without the leave of the court. (para. 3)

5. D2 and D3 pleaded guilty to Charge 6. Besides, D3 pleaded guilty to Charge 3 and Charge 4. The Court convicted them on their own pleas to the respective charges. (para. 6)

Summary of the Court’s reasons for sentence

A. Facts of the case

Facts of Charge 1: “conspiracy to wound with intent”

6. D1 created a platform on Telegram in February 2022 (“Platform 1”). Platform 1 was initially a public group and later changed to be a private group with a link available for joining the group. D1 was the group owner and administrator, while other defendants were members of the group. (paras. 10-11)

7. During the period in question, Platform 1 contained more than 200 posts in various forms that published or forwarded texts, pictures, videos or other images. They depicted hateful and violence-inciting remarks, inculcated radicalism, and were of a nature to encourage lawlessness, which included: advocating the use of extreme force and means to attack police officers, public officers, epidemic prevention personnel and civilians in support of epidemic prevention policies, using different tactics and weapons, so as to impede the implementation of the epidemic prevention policies by the Government of the Hong Kong Special Administrative Region (HKSAR); and even launching a massacre within the community. Speeches were full of resentment and hatred. Some of the posts even directly or indirectly advised group members how to use tactical tools when launching attacks against the HKSAR Government or the police force, how to make explosive substances and how to print arms by 3D printing; and incited group members to breach the epidemic prevention rules and to blast the community testing centres. (paras. 12-14)

8. D1 was the creator of the platform, assuming a leading role throughout the whole discussions and could be said as the most crucial promoter. He smeared the Government’s epidemic prevention measures; disseminated unverified or even false information; and advocated for armed resistance against epidemic prevention policies, massacre of the Hong Kong people, killing of those with “slave mentality”, police officers, civil servants, those who assisted in fighting against COVID-19 as well as members of the public in support of the Government’s implementation of epidemic prevention policies, and even killing of one’s own family members. He also stressed that the attacks were to target individuals, and that one had to go for “a single neck slash” and be “swift, fierce and sharp” when using violence against others. In the messages posted by D1, he mentioned that he would attack others by

neck-slashing with a knife if necessary. (paras. 15-18)

9. D2 also actively participated in the discussions by: provoking attacks against target persons with various weapons; discussing and enquiring with group members about the availability of materials for making explosives; promoting the use of weapons and facilitating production of explosives by even explaining the extraction and manufacture methods required. He further suggested using the fruit knife as a weapon for attacking police officers and encouraged group members' actual actions rather than mere discussions. D2 initiated meeting amongst group members to understand the level of their weapons and equipment; discuss the division of work; share the past experience in arms production; discuss plan for massacre; and made enquiry about the model of and container for gunpowder, as well as the target of attack. (paras. 20-21)

10. D3's posts supported inflicting grievous bodily harm upon the epidemic prevention personnel with knives and advocated for imitation; and even incited others to kill the epidemic prevention personnel and public officers. (para. 24)

11. D5 talked about how to buy weapons as well as how to use violence and offensive weapons in the discussions. He suggested to group members the purchase of 3D printed pistols. Such animated discussions gradually formed an agreement. (para. 27)

Facts of Charges 3 and 4: "possession of a dangerous drug" and "possession of arms and ammunition without licence"

12. After the arrest of D3, the police seized upon search of his residence, *inter alia*, a bag of 1.98 grammes of cannabis in herbal form, one crossbow and three short arrows. These were the items particularised in Charge 3 and Charge 4 respectively. (para. 25)

Facts of Charge 5: "doing an act or acts with a seditious intention"

13. Charge 5 involved an Instagram account created by D1 (“Platform 2”) and the posts therein. Platform 2 was a public account, with 175 followers and was accessible to anyone. D1 was the owner of the Platform 2 account and had authority to publish, view, archive or delete posts on that platform. D1 described himself in his profile on the homepage of Platform 2 as “extremely violent”, “supporting resistance by force”, “destroying all totalitarian dogs and pro-tyranny lowlifes”. (paras. 29-30)

14. During the offence period, D1 published a total of 13 seditious posts on Platform 2, the content of which included: (para. 31)

- (a) advocating the use of force as the only way out to fight against the existing political regime, and that all hatred in society should be resolved by means of violence;
- (b) inciting others to disobey any lawful order, with society thus becoming ungovernable;
- (c) cursing all those in power that they should be punished and stating that police officers, government supporters and those supporting epidemic prevention measures should be cursed, hated and maltreated;
- (d) making remarks that incited hatred by stating that “Chinese people should be killed”;
- (e) smearing the epidemic prevention policies and the enforcement actions by police officers;
- (f) drawing up an “enemy list” that included public officers, police officers and those helping with the implementation of the anti-COVID19 measures, and stating that such persons should be executed;
- (g) alleging that the epidemic prevention policies implemented by the Central Authorities and the HKSAR Government were acts of totalitarian aggression and cruelty to the people.

Facts of Charge 6: “conspiracy to do an act or acts with a seditious intention”

15. Charge 6 involved two groups that were both created on Telegram,

namely Signal Lab Group (“Platform 3”) and TG Lab Group (“Platform 4”). D2 and D3 were members of Platform 3 and Platform 4. (paras. 32-34)

16. Members of Platform 3 and Platform 4 repeatedly mentioned their ideology of overthrowing the existing political regime and establishing the Hong Kong State; they also actively discussed, promoted and suggested strategies calling for the conduct of unlawful activities to realise these objectives. D2 and D3 actively participated in the group and conspired together with other members to develop various kinds of weapons ranging from pistols, air guns, crossbows to explosives: (paras. 36-40)

- (a) D2: discussed the manufacture of firearms, suggested members to try the use of javelin, hatchet, dagger or spear as weapon; uploaded pictures of cartridge/calibre chart and raw materials for making guns, and recommended using different weapons such as knife, bow and arrow, as well as explosive substance for different purposes; promoted the use of crossbow for short-distance battles; led members to discuss the use of harpoon or spear gun as tactical gear; claimed that he had channels for buying firearms and crossbows; for war preparation, published pictures of police operations; and taught the group on how to make homemade petrol bombs.
- (b) D3: discussed how to make weapons like arms, crossbows, throwing devices and so on; claimed to have already possessed crossbows and to be in the process of developing them for improvement; posted photos of handmade crossbows and further published and widely circulated three short videos on demonstrating and testing his handmade crossbows; recommended the use of different weapons, such as grenade, drone and needle missile; posted short videos of manufacturing mini-dart alcohol guns and homemade pistols; proposed to make bullets with nails and asked group members if they knew how to make bullets; and incited others to “rob arms”.

B. Sentencing

Charge 1: “conspiracy to wound with intent”

17. The offence of wounding with intent carries a maximum penalty of life imprisonment, whereas under s. 159C of the Crimes Ordinance the criminal liability for an offence of conspiracy is equivalent to, and shall be viewed in the same light as, that for its substantive offence but the term of imprisonment for the charge shall be determined with regard to individual circumstances and culpability. The Court also had to fine-tune the sentences on account of the degree of participation by individual defendants. (paras. 42 and 52)

18. The Court noted that the gravamen of the offence in this case was conspiracy, the essence of which was the agreement of the individuals to advocate and rationalise infliction of harm on law enforcement officers, the Government, the public officers implementing the relevant measures and even the general public who were willing to comply with such measures. This case involved at least five or six perpetrators, where the plan gradually took shape over a period of time through brainstorming and mutual encouragement. Under mutual encouragement, everybody became increasingly realistic and put forth clear arrangements and plans. In order to stand out among others, everybody would make radical remarks and further plans. Taking into account the development of initial fermentation of opposition to government to actual planning of actions, the Court believed that the damage to society would have been more tangible but for the police’s timely action to make arrests. (paras. 43 and 47)

Sentencing of D1: Charges 1 and 5

19. Having regard to the role taken by D1, the Court considered his criminal liability the greatest among all the defendants, and therefore adopted 45 months’ imprisonment as the starting point. As far as Charge 5 is concerned, the Court noted that D1’s posts, while devoid of any discernible political ideology, consisted purely of hatred against others, which in the Court’s view was indeed not much different from the practice of ordinary terrorists. The maximum penalty for the offence of “doing an act or acts with a seditious intention” was 2 years’

imprisonment. Although Charge 1 and Charge 5 took place contemporaneously with similar particulars, the two platforms exerted an even greater impact by their aggregate number of followers. Hence, the reasonable starting point was 15 months' imprisonment. Taking into account the totality principle, the Court ordered 12 months on Charge 5 to run consecutively to the sentence on Charge 1, making a total starting point of 57 months' imprisonment. The Court held that deterrence should be the primary sentencing principle for the charges, and that the only valid mitigation was D1's timely plea of guilty. Therefore, the 57 months' imprisonment was reduced to 38 months in accordance with the sentencing guidelines laid down by the Court of Appeal. (paras. 44-46, 48 and 50-51)

Sentencing of D2: Charges 1 and 6

20. As regards Charge 1, the degree and seriousness of D2's participation was not low, and eventually he even reached an agreement with other members to undermine the Government and harm other Government supporters by force. The Court took the view that D2's criminal liability, albeit not the gravest of all, warranted a reasonable starting point of 36 months' imprisonment in the overall circumstances of the case. (para. 53)

21. For the offence of "conspiracy to do an act or acts with a seditious intention", the maximum penalty was 2 years' imprisonment. A reasonable starting point of 18 months' imprisonment was adopted. Charge 1 and Charge 6 took place contemporaneously and their particulars were similar. After considering the totality principle, the Court decided that 12 months of the sentence on Charge 6 to run consecutively to that on Charge 1, rendering the total starting point to be 48 months' imprisonment. (para. 54)

22. D2 committed the offences under the age of 18, which was not extremely young, yet the damage he caused had no direct correlation with age. Youth was no excuse to exonerate oneself from liability for prior wanton behaviours. In any event, however, having regard to the age of D2, the Court specially exercised its discretion and reduced the sentence

by 3 months. The original starting point for D2 was 48 months, which was reduced to 32 months for his guilty plea, and further to 29 months' imprisonment on a discretionary basis given his age. (para. 55)

Sentencing of D3: Charges 1, 3, 4 and 6

23. In respect of Charge 1, D3 issued three posts in total without proposing any sophisticated plan or directly suggesting attacks on anyone. The Court agreed that his degree of participation was relatively low, and so adopted a starting point of 24 months' imprisonment. (para. 56)

24. The quantity of the dangerous drug involved on Charge 3 was not significant, for which the Court imposed a sentence of 3 months' imprisonment. (para. 57)

25. Charge 4 involved a crossbow and three arrows. There were no sentencing guidelines for this kind of offence. The Court took into account the fact that D3 intended to use the weapon concerned and did produce it upon others' instructions. Furthermore, having regard to the presence at D3's residence of other weapons which were not particularised in the Charge, and the capability of the crossbow to cause harm within 7 metres, the Court held that the starting point should be 15 months. (paras. 58-59)

26. The Court's consideration on Charge 6 was the same as that for D2, thus adopting 15 months' imprisonment as the starting point. The Court adopted 24 months on Charge 1 as the starting point; the sentence on Charge 3 was to run consecutively to other sentences; 3 months on Charge 4 was to run consecutively to other sentences; 6 months on Charge 6 was to run consecutively to other sentences; the total starting point for the four charges was 36 months, which was reduced to 24 months' imprisonment for D3's guilty plea. (para. 60)

Sentencing of D5: Charge 1

27. Given both the fact that D5 merely issued four posts and the content

therein, the Court found his degree of participation relatively low, thus adopting a lower starting point of 24 months, which was reduced to 16 months for his guilty plea. There were no further mitigating circumstances. (para. 61)

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