

Appeals Court Tosses Conviction For Closing Vehicle Door

On October 26, 2015 Hong Kong's [highest court acquitted](#) Law Yat-ting of tampering with a motor vehicle.

On February 21, 2014 Yat-ting was walking in the Tsuen Wan section of Hong Kong when he saw a parked van that had its front passenger door open. Yat-ting closed the door.

The van's driver was standing nearby when he saw the door being closed. He went and looked through a window in the van and saw that his mobile phone that had been on the front seat was missing. He went after the person he saw — Yat-ting — who was walking away. The driver stopped Yat-ting about 30 feet from the van and accused of stealing his mobile phone. The police were summoned and Yat-ting was arrested for theft.

Yat-ting, the owner of a handset accessory shop in Hong Kong, protested that he only closed the open door and didn't take the mobile phone. The theft charge was dropped when the police didn't find the phone on him. However, he was charged with tampering with a motor vehicle for closing the van's door.

Yat-ting represented himself during his bench trial in the Tsuen Wan Magistrates' Court on May 22, 2014. Yat-ting's defense was he did nothing but close the door, but he didn't argue his action didn't meet the definition of vehicle "tampering" under the law. The judge solely relied on the driver's testimony that Yat-ting was the person who closed the van's door in finding him guilty of tampering with the van. On June 5 Yat-ting was sentenced to serve six weeks in jail, but he was granted bail pending appeal.

Although he was appointed counsel for his appeal, his legal aid lawyer did not argue that closing the van's door wasn't vehicle "tampering" under the law. Yat-ting's conviction and sentence were affirmed by Hong Kong's Court of First Instance on December 17, 2014.

Yat-ting's bail was revoked and he served

his six week jail sentence.

Professor Eric Cheung Tat-ming, director of the Clinical Legal Education Programme at the University of Hong Kong, agreed to [represent Yat-ting pro-bono](#) in submitting a petition for leave to appeal to Hong Kong's highest criminal court — the Court of Final Appeal. The petition was filed on April 22, 2015, and accepted on July 3, 2015, to resolve the sole issue of whether the mere act of Yat-ting closing the door of the van constituted illegal "tampering" with a motor vehicle.

The Department of Justice didn't oppose Yat-ting's appeal, and the Court of Final Appeal found there was no need to hold an oral hearing. On October 26, 2015 the Court unanimously quashed Yat-ting's conviction on the basis his act of closing the vehicle's door did not constitute criminal "tampering." [The Court stated](#) in its precedent setting ruling:

"The section does not use the words "interferes", "meddles" or "touches" but instead uses "tampers,... tampering within section 49 means an act constituting either interference or meddling with part of a vehicle so as to cause alteration or harm to it, or the making of an unauthorised change to it. [¶12]

... His act of closing the door could simply have been an act of helpfulness towards the vehicle owner. In any event, there is no evidence of any alteration or harm to the door or any other part of the vehicle, or any change in it, as a result of the appellant's interaction with the vehicle. In the circumstances, therefore, the evidence could not support the offence charged and the appellant's conviction was wrongful and should be quashed." [¶21]

The [Court stated](#) about Yat-ting's case:

"It is an example, unfortunately, of how in an adversarial system, particularly where an individual is initially unrepresented at trial, there are cases in which a material point of law is not raised in the courts below. Fortunately, ... a wrongly convicted appellant has been able to overturn that conviction on a new point of law raised for the first time in this court. That he had, in the meantime, to serve a sentence of six weeks' imprisonment for the offence of which he was convicted is naturally most regrettable but this could have been mitigated by a more timely appeal coupled with an application for bail." [¶1]



Tsuen Wan district of Hong Kong

The [appeals court ordered](#) "that the respondent pay the appellant the sum of HK\$10,000 for the costs incurred in the courts below and the sum of HK\$4,235 for disbursements incurred by the appellant for the leave application and appeal before this Court." HK\$14,235 is the equivalent of about US\$1,835 (10-27-15 exchange rate).

Although a legal issue is generally considered "waived" if it is not raised in a lower court, the [Court of Final Appeal acknowledged](#) that in Yat-ting's case it was necessary to consider his new legal argument in order to correct the injustice that he was "wrongly convicted" of a crime that didn't occur: "This submission that the facts disclosed by the evidence did not, in law, amount to an act of tampering within section 49 of the Ordinance is, as already mentioned, not one which was advanced in either court below. It is a new point pursued for the first time in this Court. However, it is a pure point of law and no facts need be investigated in order to resolve the point on appeal. Accordingly, albeit that the Court will only do so rarely, this is an appropriate case in which to entertain the fresh point of law on appeal." [¶22]

[Click here to read](#) the ruling of the Court of Final Appeal in *HKSAR v. Law Yat Ting*, FACC3/2015 (Court of Final Appeal, 10-26-2015).

Source: [HKSAR v. Law Yat Ting](#), FACC3/2015 (The Court of Final Appeal, 10-26-2015) (Quashing conviction)

[Top court closes door on case of van 'tampering'](#). By Kenneth Lau, The Standard, October 27, 2015

[Law school students help wrongfully jailed man win his appeal](#), ejnsight.com, October 27, 2015

