

LCQ2: A speeding case

Following is a question by the Hon Lee Wing-tat and a reply by the Secretary for Justice, Mr Wong Yan Lung, SC, in the Legislative Council today (January 30):

Question:

It is learnt that in a court case in which a tycoon was prosecuted for alleged speeding, the Department of Justice amended the charge only after the commencement of the trial of the case early this month. The speed of the vehicle concerned as detected with a laser gun was revised from 114 kilometres per hour (“km/h”) to 79 km/h, and thus the charge was significantly lessened from speeding in excess of the speed limit by 64 km/h to speeding by 29km/h. The case has aroused wide public concern about the fairness and justice of the prosecution procedure. In this connection, will the Government inform this Council:

- (a) of the detailed reasons for significantly lessening the charge in the case, and whether any mistake made by legal officers or law enforcement officers is involved; if so, of the follow-up actions the Government will take;
- (b) whether it has explored how it can address public concern about the fairness and justice of the prosecution procedure arising from the case, and if its way of handling the case has followed the principle that “justice must not only be done, but must also be seen to be done”; and
- (c) whether it has assessed if the evidence obtained by using laser guns to detect the speed of vehicles can still meet the standard of proof required by the law?

Reply:

Madam President,

(a) As to why the Department of Justice amended the summons in this case, after the prosecution witness (the police officer responsible for operating the laser gun) was cross-examined, the evidence he gave turned out to be weaker than expected, so that the Prosecution was unable to prove beyond reasonable doubt the speeding offence as alleged in the original summons. Accordingly, it was necessary to review the case in accordance with established prosecution statement and policy.

As I understand, the main problem with the evidence of the police officer lies in his mistake about the offence location, i.e. where the defendant was caught speeding. The police officer produced a sketch indicating the location of the laser gun and the location where the defendant was caught speeding. However, during cross-examination, the defence could show that the location where the police officer alleged the defendant’s car was caught speeding, i.e. the location as stated in the summons, was incorrect. Because of this, the Prosecution had difficulty proving the defendant’s car was driving at 114 km/hr at the location alleged in the summons. This is the main

reason why the Prosecution believed there was less than a reasonable chance to secure a conviction on the original summons.

Madam President, during the course of cross-examination, the police officer was also asked about the tests performed on the laser gun. As I understand from my prosecuting colleague, the police officer stressed all tests had been passed including the Fixed distance/Zero velocity test and that the laser gun was functioning properly. However, under cross-examination, he also admitted that because of his negligence, he wrongly put down the test distance as 50 metres instead of 60 metres.

Secondly, under cross-examination, the defence produced a laser gun operation guideline issued by a certain police region, which required the police officer to perform the tests at the scene of operation in addition to the same tests performed at base. The requirement of performing the tests at the scene of operation was only mentioned in the guideline. This was not required by the manufacturer's user manual. According to enquiry with my prosecuting colleague, the prosecution expert had assured him that passing the tests as required by the manufacturer's user manual was already sufficient to ensure the accuracy of the laser gun. Thus, performing the tests at the scene of the operation was not strictly necessary and had no bearing on the accuracy of the laser gun at all.

According to the report from the prosecuting counsel, the defence counsel had asked him to offer no evidence against his client in light of the outcome of the cross-examination. The prosecuting counsel turned down the request but pointed out that a better proposal might be considered. Eventually, the defence counsel informed the prosecutor that the defendant was willing to plead guilty to speeding at 79 km/h. Prosecuting counsel, a Senior Government Counsel, consulted the Case Officer, who then sought instruction from her superior superintendent. Finally, the police colleague indicated no objection. Prosecuting counsel then sought and obtained clearance from his supervisor, a Senior Assistant Director of Public Prosecutions, to amend the summons. After reaching agreement, the prosecution and the defence informed the trial magistrate of the agreement. The trial magistrate, who was conversant with the facts of the case, raised no question. Finally, the summons was amended and the defendant was fined with 3 points deducted.

(b) The defendant was prosecuted in accordance with the usual practice of dealing with speeding offences. The decision to amend the contents of the summons was completely based on the quality of the evidence as it unfolded in court, without any regard to the defendant's identity or status. Had the evidence remained as strong as initially expected, the prosecution would have proceeded with the summons in its original form.

Following publicity of the case in the mass media, the Director of Public Prosecutions had specifically reviewed the procedure as handled by the prosecutor of the case and was satisfied that the decision was correct. The review and conclusion of the Director of Public Prosecutions were released to the public through the mass media on January 14.

(c) There was nothing that emerged in the evidence which questioned the accuracy of the laser gun equipment. While each case must be decided on its own

particular facts, based on previous experience, our courts have accepted the accuracy of laser gun equipment as a speed detection device, and there is no reason to suppose that a different view will be taken in the future. Independent expert evidence also confirms the accuracy of the equipment. As a matter of fact, the use of laser gun equipment as a speed detection device has been approved in many places apart from Hong Kong, including Germany, the United Kingdom, Austria, Switzerland, Sweden, Netherlands and almost all states in the USA.

Based on information provided by the Police, laser guns are both accurate and reliable. They are regularly serviced and maintained by the manufacturer's local agent and mechanisms are in place to ensure the accuracy of the equipment through calibration. The manufacturer's user manual has all along been observed in full by laser gun operators in all Police Regions, and is now the only operating guidelines for laser gun operators. Moreover, a working group has been established to see if there is room to enhance the training and procedures in respect of the handling of enforcement cases involving laser guns to ensure the best advice is provided to officers handling such enforcement cases.

Madam President, I understand from colleagues of the Transport and Housing Bureau and the Police that speeding is one of the major contributing factors causing traffic accidents. Laser guns are an integral part of our enforcement against speeding. To effectively combat speeding, the Police will continue with their robust enforcement action including the use of laser guns the accuracy of which has not been challenged in court in this case.

Ends/Wednesday, January 30, 2008