

分科二 訟辯

Sub-division II Advocacy



直至 2012 年 11 月，分科二由副刑事檢控專員沈仲平博士掌管，領導一組包括首長級人員及高級檢控官級別的人員。本分科的律師都是經驗豐富的訟辯律師，負責在敏感和重大的刑事審訊中擔任主控官，以及協助死因裁判官進行死因研訊。分科內的律師有時亦會處理刑事上訴案件。除了訟辯工作外，他們還會根據一項名為 FAST 的法律指引制度，為執法機關提供法律指引。

所有刑事檢控科的新入職檢控官，通常會先調派本分科參加刑事訟辯課程，接受培訓。他們會先出席講座，然後參與模擬審訊，及派駐裁判法院實習。新入職的檢控官在裁判法院累積了一定的檢控經驗後，便會開始負責較複雜案件的檢控工作或獲委派在複雜的案件中擔任副手，以增加他們的訟辯經驗。

下文載述分科二的律師所處理的一些重大或廣受矚目的案件。

Until November 2012, Sub-division II was headed by Deputy Director of Public Prosecutions Dr Alain Sham who led a team of directorate officers and Senior Public Prosecutors. Counsel in this Sub-division are experienced advocates who prosecute sensitive and major criminal trials and assist Coroners in the holding of death inquests. Occasionally counsel in the Sub-division conduct criminal appeals. In addition to their court duties, counsel also provide legal advice to law enforcement agencies under the FAST advisory system.

New public prosecutors who first join the Prosecutions Division are usually posted to this Sub-division to receive training in the Criminal Advocacy Course which consists of lectures followed by mock trials and attachments in Magistrates' Courts. When new prosecutors have accumulated a fair amount of experience in prosecuting in the Magistrates' Courts, they start prosecuting more complicated cases or are assigned as junior counsel in complex cases to further their advocacy experience.

The following are some of the major or high profile cases conducted by Counsel in Sub-division II.

在香港特別行政區 訴 康子賢 (高院刑事案件 2011 年第 348 號) 一案中, 被告在 2009 年年初的數星期內, 先後在兩名性工作者的單位內用染有哥羅芳的毛巾焗死她們。每次犯案, 他都先與受害者進行性行為, 用染有哥羅芳的毛巾掩蓋她們的口鼻, 然後盜取受害者的財物和離開單位。被捕後, 被告聲稱曾緊扼着受害者頸部, 他說這是為了獲取性滿足, 而非故意殺死或嚴重傷害她們。陪審團裁斷被告一項謀殺和一項誤殺罪名成立, 判處他終身監禁。

在香港特別行政區 訴 葉寶琳及其他 7 人 (東區裁判法院刑事案件 2011 年第 5159 號) 一案中, 八名被告在 2011 年 6 月 4 日參與未經批准的公眾遊行, 由維多利亞公園出發前往北角警署, 要求釋放同年較早時在中區的反財政預算案中示威而被拘捕的人士。八名被告突破警方的封鎖線, 期間粗言穢語, 破口大罵。他們沒有理會警方的多番警告, 阻礙交通以導致英皇道嚴重阻塞。各人經審訊後被裁定非法集結及明知而成為未經批准集結的成員罪名成立。法院拒絕接納辯方指有關通知規定違反《基本法》的陳詞, 裁定社會安寧受到破壞。各被告被判處的刑罰由監禁 4 星期, 緩刑 12 個月, 以至罰款 800 至 3,000 元不等。

在 2011 年 11 月, 盧慶祥先生與廖景棠女士在一名台灣男子的死因研訊 (死亡個案的調查 / 研訊 2009 年第 839 號) 擔任死因裁判人員。死者因涉及欺詐罪行被還押懲教署看管以等候審訊, 期間他被發現死亡。驗屍結果顯示死因為軟組織嚴重創傷。一名海外專家認為是酗酒過量引起的併發症致死, 亦與死者未有在適當的醫院環境下接受急救治療有關。五人陪審團作出死因未詳的裁決, 並裁定致死的創傷不詳。

在香港特別行政區 訴 顧志雅 (區院刑事案件 2012 年第 622 號) 一案中, 被告 13 次使用女友提供的兩張信用卡購買電子產品, 當中大部分為 iPad 平板電腦, 總值 343,887 元, 然後轉售予小販套現。被告的女友已婚, 上述其中一張信用卡屬她所有, 另一張是銀行應她丈夫要求而發給她的附屬信用卡。被告女友及其丈夫均拒絕繳付有關帳單。被告否認 18 項以欺騙手段取得財產的控罪, 並

In *HKSAR v Hong Tsz Yin* HCCC 348/2011, the defendant suffocated two sex workers with chloroform-impregnated towels at their respective flats within a matter of weeks in early 2009. On each occasion, he had sex with the victim first and then left her flat with her property, leaving a chloroform-impregnated towel covering her respiratory openings. After his arrest, the defendant claimed he had squeezed the victims' necks for sexual gratification and that he had no intention to kill or to cause them serious harm. The defendant was found guilty by a jury of one count of murder and one count of manslaughter and was sentenced to life imprisonment.

In *HKSAR v Yip Po Lam and 7 others* ESCC 5159/2011, the eight accused took part in an unauthorized public procession from Victoria Park to North Point Police Station on 4 June 2011 to demand the release of people arrested at the anti-budget demonstration in Central earlier in the year. The eight accused broke through police cordon lines while shouting abuse and insults. They ignored repeated warnings, blocked traffic and caused a serious obstruction on King's Road. They were convicted after trial of unlawful assembly and knowingly taking part in forming an unauthorized assembly. The court rejected the defence submission that the notice requirement breached the Basic Law and also found that there was a breach of peace. The accused were sentenced to terms ranging from 4 weeks' imprisonment suspended for 12 months to fines in the sum of \$800 to \$3,000.

In November, Mr Francis Lo together with Miss Laura Liu acted as Coroner's Officers in an inquest into the death of a Taiwanese male (CCDI 839/2009). The deceased was found dead whilst remanded in the custody of the Correctional Services Department pending trial in relation to a deception offence. The autopsy showed that the cause of death was extensive soft tissue injury. An overseas expert opined that the death resulted from complications due to alcohol withdrawal and also was related to the fact that the deceased was not treated as a medical emergency in an appropriate hospital environment. A five-member jury returned an open verdict and concluded that the injury causing the death was unknown.

In *HKSAR v Koo Chi Nga* DCCC 622/2012, the defendant used two credit cards provided by his girlfriend, a married woman, to buy electronic products, mostly i-Pads, worth of \$343,887 on 13 occasions. He then re-sold them to hawkers for cash. One of the credit cards belonged to his girlfriend while the other was a supplementary credit card issued to his girlfriend by the bank at the request of the girlfriend's husband. Both his girlfriend and her husband refused to settle the bills. The defendant pleaded not guilty to 18 counts of obtaining property by deception. The Court rejected the argument that the defendant's girlfriend would allow him to use the cards without restraint, convicted the defendant of all charges and sentenced him to 3 years' imprisonment.

In *HKSAR v So Cheuk Wai Allan* KCCC 1059/2012, a neurosurgeon working at the Queen Elizabeth Hospital was convicted after trial of five charges of indecent assault for touching female nurses with his penis and two charges of committing an act outraging public decency for exposing his private parts to female nurses while he was on duty. He was sentenced to a total of 16 weeks' imprisonment.

In *HKSAR v Leung Kwok Chi* HCCC 38/2012, the defendant had worked as a Correctional Services Department officer for over 30 years. A member of various gun clubs and associations in Hong Kong and overseas, he was also a qualified range conducting officer who had helped organizers maintain safety in shooting grounds during competitions. He had represented Hong Kong in various world shooting competitions and won many awards. Under the terms of his arms licence, he was permitted to keep, either at his home or at the Rifle Association, 700 rounds of live ammunition and a total of 14 firearms including shot guns, pistols, air pistols, rifles and revolvers. On 15 April 2011, the defendant called "999" and requested an ambulance as his leg was injured. The paramedics arrived and found that the defendant had a gunshot wound to his left thigh. The defendant claimed that he had accidentally shot himself when cleaning his rifle inside his flat.

During the police investigation, a "Thompson Contender" 0.22 calibre rifle was found on the floor with a fired

辯稱指其女友容許他無限制地使用該等信用卡。法院不接納這個抗辯理由，裁定被告所有控罪罪名成立，判處他監禁3年。

在香港特別行政區 訴 蘇卓威(九龍城裁判法院刑事案件 2012 年第 1059 號)一案中，一名在伊利沙伯醫院工作的腦外科醫生經審訊後被裁定五項在當值時以陽具觸碰女護士的非禮罪罪名成立，以及兩項在當值時向女護士暴露下體，作出有違公德行為罪罪名成立，判處他合共監禁 16 個星期。

在香港特別行政區 訴 梁國熾(高院刑事案件 2012 年第 38 號)一案中，被告曾任職懲教署逾 30 年，是香港及海外多個槍會和有關組織的會員，亦是合資格的射擊場主任，曾在射擊比賽中協助維持射擊場的安全。他曾代表香港參加多項世界射擊比賽，多次獲獎。根據他所持有火器牌照的條款，他獲准在家中或射擊總會保管 700 發實彈和合共 14 支槍械，包括鳥槍、手槍、手槍型氣槍、來福槍及左輪手槍。2011 年 4 月 15 日，被告因腿部受傷而致電 999，召喚救護車。輔助醫療人員到場後發現被告左大腿受槍傷。被告稱在其單位內清潔來福槍時意外地槍傷自己。

調查期間，警方發現單位地上有一支點二二口徑的“Thompson Contender”長槍，一枚已發射的槍彈殼卡住槍膛。同時又發現一張椅子有一個子彈孔，而椅子底下的地上有一塊子彈碎片。除了火器牌照授權管有的火器及彈藥外，被告還管有另一組“Thompson Contender”長槍組件、五支火器槍管、八個滅聲器、三支超過兩焦耳的長槍型氣槍、兩支左輪手槍、一支信號槍、一枚 38 毫米的可使用黃色煙霧彈、一枚直徑 1.5 吋的催淚彈和 3,881 發彈藥。此外，警方亦在被告家中發現大量槍口能量低於兩焦耳的氣槍、模型槍、假彈藥，以及使用過的煙霧手榴彈和彈藥。被告承認一項無牌管有槍械及彈藥罪名，被判處監禁 18 個月。

在香港特別行政區 訴 曹永年及其他人(區院刑事案件 2011 年第 360 號)一案中，三名被告是廉政公署人員，職級分別為總調查主任(第一被告)、高級調查主任(第二被告)及助理調查主任(第三



cartridge case jammed in the chamber. A bullet hole was found on a chair and a bullet fragment was found on the floor underneath the chair. In addition to those firearms and ammunitions authorized by the firearm licence, the defendant was in possession of another Thompson Contender receiver assembly, five firearm barrels, eight silencers, three air rifles of more than two joules, two revolvers, a flare pistol, a live yellow smoke 38 mm cartridge, a 1.5 inch tear gas cartridge and 3,881 rounds of ammunition. Further, a large number of air guns with a muzzle energy of less than two joules, model guns, dummy ammunition, and fired smoke grenades and ammunition were also found inside his home. The defendant pleaded guilty to one count of possession of arms and ammunition without licence and was sentenced to a term of 18 months' imprisonment.

In *HKSAR v Cho Wing Nin and others* DCCC 360/2011, the three defendants, who were ICAC officers occupying the ranks of Chief Investigator (D1), Senior Investigator (D2) and Assistant Investigator (D3), were involved in the investigation of a fraudulent trading case. They had taught an immunized witness Cheung what to say in the trial, shown him witness statements of the other immunity witnesses, told Cheung to memorize his own witness statements, taught him how to lie about

his evidence and hinted to Cheung that he could read his own witness statements even after he had commenced giving evidence in the trial. They were jointly charged for one charge of doing acts tending to pervert the course of public justice and another charge of misconduct in public office (MIPO). The 1st and 2nd defendants were convicted of both charges and each was sentenced to a term of 30 months' imprisonment. The 3rd defendant was convicted of the MIPO charge and was sentenced to a term of 18 months' imprisonment. D1 has applied for leave to appeal against conviction and sentence while D2 and D3 have also applied for leave to appeal against conviction.

In *HKSAR v Lau Ting Sing, Jerome and another* DCCC 1072/2011, the 1st defendant, by pretending he was well connected in the advertising and modelling business, took advantage of two young, guileless and gullible aspiring models by luring them to have a photo shoot in private. He took photographs of them in compromising positions and in skimpy garments on the pretence that the photo session would help them obtain jobs and advance their careers. He indecently assaulted one of them in the course of the session. Subsequently, the defendant used the photographs to intimidate both of them. After trial, he was convicted of one count of indecent assault and two counts

被告)，他們涉及在調查一宗欺詐營商案件期間，教導一名張姓特赦證人在審訊時如何作供，並向他展示其他特赦證人的證人陳述書、指示張牢記他本人的證人陳述書及教導他如何在作供時說謊。他們向張暗示即使張在審訊中已經開始作供，仍可閱讀他本人的證人陳述書。三名被告共同被控以一項作出傾向破壞司法公正的作為罪名，以及另一項公職人員行為不當罪名。第一被告與第二被告被裁定兩項罪名成立，各判處監禁 30 個月；第三被告被裁定公職人員行為不當罪名成立，判處監禁 18 個月。第一被告已就定罪及刑罰申請上訴許可而第二被告及第三被告亦就定罪申請上訴許可。

在香港特別行政區 訴 劉定成及另一人 (區院刑事案件 2011 年第 1072 號) 一案中，第一被告佯稱在廣告界和模特兒界人脈甚廣，誘使兩名性格單純、容易受騙並渴望成為模特兒的年輕人讓他私下拍照。被告藉詞拍照有助他們獲得工作和發展事業，要求他們穿着暴露的衣服及擺出不雅的姿勢，他並在拍照期間非禮其中一人。被告後來用拍下的照片恐嚇他們。被告經審訊後被裁定一項非禮及兩項刑事恐嚇罪名成立，判處監禁 17 個月。

第二被告則聲稱第一被告指示他兩次致電一名受害人，威脅把受害人的照片放上男同性戀者網站，而拍攝有關照片的情況與其他渴望成為模特兒的人士的情況類似。第二被告承認一項刑事恐嚇罪名，判處 240 小時社會服務令。

在香港特別行政區 訴 凌置業及另一人 (區院刑事案件 2012 年第 109 號) 一案中，第一被告的住所被發現藏有三支仿製槍械、一幅照片及一張附有地址的字條。在警誡下，第一被告承認第二被告指示他用刀襲擊照片中的人士 (其後證實是一位著名的武術家)，並獲承諾給予三萬元作為酬勞。第一被告知道該人士的背景，於是向朋友借了三支假氣槍，用以在施襲時唬嚇他。第二被告其後被捕，他表示有人以五萬元酬勞僱用他進行襲擊，他再把這項任務交給第一被告。兩名被告均被控以一項串謀傷人罪，而第一被告同時被控以管有仿製火器罪。兩名被告均承認控罪，分別被判處監禁 36 個月及 32 個月。

of criminal intimidation. He was sentenced to a term of imprisonment for 17 months.

The 2nd defendant, on the other hand, claimed that he had been instructed by the 1st defendant to call a victim twice and threaten that he would place his pictures, taken under similar circumstances as the other aspiring models, on some gay websites. The 2nd defendant pleaded guilty to one count of criminal intimidation and was sentenced to 240 hours of community service.

In *HKSAR v Ling Chi Yip and another* DCCC 109/2012, three imitation firearms, a copy of a photo and a piece of paper containing an address were found at the residence of the 1st defendant. Under caution, the 1st defendant admitted that he had been instructed by the 2nd defendant to carry

out a knife attack on the victim depicted in the photo, who turned out to be a very famous Kung Fu master. He was promised a reward of \$30,000. Knowing the victim's background, the 1st defendant therefore borrowed three fake air guns from his friend in order to scare the victim when the attack was carried out. The 2nd defendant was later arrested. He said he had been recruited by someone to carry out the attack at a reward of \$50,000 and he then delegated the assignment to the 1st defendant. Both faced a charge of conspiracy to wound. The 1st defendant also faced a charge of possession of imitation firearms. Both defendants pleaded guilty and were sentenced to a term of 36 and 32 months' imprisonment respectively.

