# DCCC 783/2019

[2020] HKDC 337

# IN THE DISTRICT COURT OF THE

# HONG KONG SPECIAL ADMINISTRATIVE REGION

# CRIMINAL CASE NO 783 OF 2019

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HKSAR

v

SIN KA HO

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Before: Her Honour Judge A J Woodcock in Court

Date: 15 May 2020

Present: Ms Karen Ng, Senior Public Prosecutor (Ag), for HKSAR/Director of Public Prosecutions

Ms Fiona Nam, instructed by Sanny Kwong & Co, for the defendant

Offence: [1] Riot（暴動）

[2] & [3] Resisting a police officer in the execution of his duty （抗拒執行職責的警務人員）

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REASONS FOR SENTENCE

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1. The defendant pleaded guilty to taking part in a riot, contrary to section 19(1) and (2) of the Public Order Ordinance, Cap. 245. The particulars of the offence are that the defendant on 12 June 2019, outside the public entrance of the Legislative Council Complex, No 1 Legislative Council Road, together with other persons took part in a riot.

*Facts*

1. This riot outside the public entrance of the seat of the legislature was clearly captured by security cameras; the CCTV footage is undisputed. During this riot, the defendant is seen at the front of a crowd with others facing police officers and acting violently. He can be clearly identified before he was arrested. He did not run away with the rest of the rioters behind him. He was essentially caught red-handed.
2. That day, 12 June 2019 was when the second reading of the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 was scheduled to resume. The designated demonstration area at the public entrance of the Legislative Council was not open to the public. The police had issued a letter of no objection to a public meeting organised by the Civil Human Rights Front on the pavement of Lung Wui Road opposite to the Legislative Council to be held from between 10:00 on 12 June 2019 and midnight on 14 June 2019. This public meeting was subject to prescribed conditions.
3. On the morning of 12 June 2019, the police had formed a police checkline outside the vehicular entrance of the Legislative Complex leading to the public entrance on Tim Mei Avenue. The police were there to prevent any unauthorised entry into the Legislative Council and maintain public order. Two rows of mills barriers were placed in front of the police checkline. From about the same time, a large group of protesters congregated opposite the police and built barricades with other mills barriers blocking the roads. There was a serious disruption to traffic from early morning there.
4. Protesters and activists had called for a general strike that day as well as for the public to protest outside the Legislative Council to stall the bill from passing its second reading. This prompted the police to tighten security around the Legislative Council and the Central Government Offices. The roads were blocked around these buildings by protesters and by late morning the Legislative Council Secretariat had announced that the second reading debate on the bill had been postponed indefinitely. This announcement did not disperse the crowds.
5. At lunchtime, around 14:00 an estimated 8,000 to 10,000 protesters surrounded the Legislative Council, occupying the pavements and roads of Legislative Council Road, Tim Mei Avenue and Lung Wui Road. The protesters were by in large peaceful.
6. At about 15:30, it appears without provocation, about 40 to 50 protesters in front of the police outside the vehicular entrance became emotional, violent and charged at the police checkline. Just prior to the charge and almost simultaneously, many of those protesters opened and held up their umbrellas. They had already removed the barriers they erected in front of them to clear a path for them to charge at the police. Some held home-made shields and many hurled items at the police, including full water bottles, bricks dug up from pavements, umbrellas and iron bars. There were large yellow then red police warning flags displayed but ignored.
7. There were several attempts to charge the police checkline causing the police to retreat backwards twice. Charging a police checkline lawfully formed to prevent people from moving beyond it must be disorderly conduct and a breach of the peace. A very large number of protesters broke through the police mills barriers and flooded into the public entrance of the Legislative Council previously closed. The police had to retreat to the main entrance of the public entrance area just in front of the glass doors of the Legislative Council.
8. The prosecution says and it can be seen from the CCTV footage that those rioters in front of the police in the public entrance caused a breach of the peace. Violence was perpetrated by the defendant and others. The defendant and others can be seen on CCTV acting in a disorderly, intimidating, insulting, provocative and violent manner. Such conduct would undoubtedly provoke others to commit a breach of the peace. An unlawful assembly turned into a riot. There can be no doubt that the defendant took part in the furtherance of a riot, his and the actions of others made the assembly a riot. The defendant admits this, hence his plea of guilty.
9. The CCTV footage shows the defendant had an intent to assist others close to him in the execution of a common purpose, they displayed force and violence sufficient to put a bystander of reasonable firmness and courage in fear. He can be seen throwing objects with force at the police from a close distance. Other items thrown at the police include hard objects, filled water bottles, umbrellas and barriers. Barriers were repeatedly rammed against police officers who were backed up against a railing.
10. The defendant himself admits that he picked up items from the ground and hurled them at the police. When he was at the front of the crowd, he and others together pushed mills barriers against the shields of the police in front of them. Those police had to also protect themselves from items thrown at them.
11. Within a few minutes the other rioters and protesters behind the defendant retreated quickly but he remained to continue to throw items at the police. When he did eventually turn to run, the police were close enough to subdue him. It took the police firing tear gas regain control of the public entrance.
12. The defendant was arrested for unlawful assembly and admitted he had participated in an unlawful assembly under caution. When arrested, he was wearing a white mask, a black helmet, a black windbreaker with a hood, a pair of long black trousers and wearing a pair of thick gloves. He was carrying a black bag and when searched, the police found seven plastic black strips in it, zip ties commonly seen used to tie metal mills barriers together.
13. That day, eight police officers manning checklines were hit by objects and they suffered injuries such as lacerations, abrasions and tenderness mainly over the limbs.

*Legislative Council CCTV and media footage*

1. The summary of facts admitted by the defendant includes a description of events captured by CCTV footage from the Legislative Council from several cameras exhibited in annex 1. Annex 2 contains still photographs or screenshots from some of the CCTV footage with the defendant identified in a blue box marked on the screenshots. Annex 3 contains a description of events captured on live news videos from Now news. An exhibit is produced containing the CCTV footage from the Legislative Council and the news videos. Some of the Legislative Council footage was played in open court as part of the prosecution’s summary of facts.
2. The difference between the media footage and the CCTV footage is as follows. Obviously, the CCTV cameras are fixed and do not move to film action as will happen when controlled by a cameraman. There is no sound therefore, no commentary which may inadvertently give opinions or make statements. The CCTV cameras are wide angled, capture more from a height and do so continuously without a break. I was told the Legislative Council camera footage was not shared with any news media nor has it previously been shown to the public.

*Annex 1*

1. I intend to summarise what is described as the events captured on CCTV footage. I have watched it all for myself and summarise it from my own viewing. It is important to demonstrate the degree of violence used and to present the background for the purposes of sentencing. It shows how events descended into a riot. Before 15:25 the situation seen in footage from camera 22 outside the vehicular entrance was calm, so calm that there were pedestrians walking between the police checkline and the assembled protesters. The protesters had built barricades using mills barriers in front of them but at about 15:28 many of the protesters began to remove them. At 15:30 many of the protesters then opened their umbrellas to shield themselves. It was not raining. Clearly there was a plan which preceded them storming the police checkline.
2. The police knew there was to be some action and raised a yellow warning flag with the words “police cordon, do not cross”. Those protesters in the front held home-made shields and mills barriers. At 15:32 those holding handmade shields banged them on the ground together appearing to signal to the crowd who then charged forward quickly straight into the police checkline. At 15:33 that crowd used violence to try to break through the mills barriers in front of the police. Hard objects were hurled and rammed against the police. The police used pepper spray to repel them. They retreated after a minute.
3. At 15:39 the crowd of protesters again tried to break through the police checkline using mills barriers as shields and battering rams. Before this second charge, it is clear that those behind the protesters were passing more mills barriers forward to those in the front of the crowd. Before the second charge, the police held up a red warning flag with the words “stop charging or we use force” in large letters. This did not deter these protesters charging once more. Again, the police tried to disperse them with pepper spray. Many missiles can be seen flying through the air aimed at the police during this charge.
4. At 15:41 the police retreated from their checkline to behind the vehicular entrance only to be quickly followed by the crowd of protesters who broke through the mills barriers set up by the police and rushed passed the vehicular entrance into the public entrance. The angle of camera 22 does move at 15:43 to follow the crowd through the vehicular entrance and into the public entrance. The number of protesters clearly outnumber the police. The public entrance is a large area under a cover with many large pillars.
5. In the footage from camera 23 which points towards the public entrance from the vehicular entrance, at 15:41 the police retreated from in front of the vehicular gate to behind it but as the protesters charge once more, they retreat again towards the public entrance of the Legislative Council, to the covered area. Some of the first protesters inside hurl items at the police checkline. Within a few minutes, by 15:44 you can see the police having to retreat even further back up against the building. The whole public entrance area is quickly filled with protesters.
6. In the footage from camera 33 PTZ one can see the whole area directly in front of the glass doors of the entrance to the building. It was in this area where the defendant rioted with others and was arrested. At 15:43 there was a row of police officers guarding the main entrance glass doors. They can clearly see trouble in front of them coming through the vehicular entrance. At 15:45 the police who had retreated from the vehicular access were inching back towards those glass doors whilst those already there moved around. At 15:45:45 one can see the police backed up against the railing, the violence escalated, many hard items were thrown at the police and mills barriers were actually rammed into them. Those police officers had their backs against a railing. At 15:46:50 you can see the majority of the group of protesters and rioters suddenly turn and run away leaving the defendant on his own, seemingly oblivious to the fact that he was no longer surrounded by other protesters and rioters. He was so intent on inflicting injury he didn’t run when everyone else ran and was caught.
7. In the footage of camera 33 at 15:45:54 the defendant can be seen picking up a mills barrier from the floor when he was near the front of the crowd. At 15:45:57 he picked up a yellow helmet and a red umbrella from the ground and then threw them at the police. At 15:46:04 the defendant again picked up a mills barrier from the ground and pushed it against the police; by now he was at the front of the crowd. He continued to do so for about 30 seconds. At 15:46:56 defendant can clearly be seen picking up and throwing a hard object with force at close range at the police in front of him. At 15:46:59 he picked up a dark coloured umbrella but when he closed it he discovered it was a folding umbrella which he then threw to the ground. At 15:47:05 he picked up a long umbrella and threw it like a spear at an officer who used his round shield to deflect it. At 15:47:09 the defendant picked up another hard object from the ground and threw that. By then everyone around him and behind him had run away yet he alone continues to attack doggedly and relentlessly. He was easily caught at 15:47:10 by the police.
8. All of his actions I have just described can clearly be seen in the screenshots from that same footage in Annex 2. The defendant agrees that it is him circled in blue in all of those screenshots. The prosecution also prepared another copy of the footage from camera 33 and 35 with the defendant live in action circled in blue when he can be seen.
9. Cameras 34 and 35 cover the public entrance from the opposite direction to camera 33. The defendant can actually be seen in camera 35 doing as I have just described as clearly from this other angle from 15:46:56. The camera angle caught the crowd from behind but one can see how violent those in front of the crowd were towards the police. They not only rammed them with mills barriers but tried to take them over the heads of the officers.
10. Camera 34 covers the whole main entrance pointing in the direction of Lung Wo Road; it covers more than camera 33 which is pointed towards the glass doors. It is this footage that again demonstrated how many people broke through the barriers when the police were forced to retreat. It demonstrated how outnumbered the police were. One can see many of those people are throwing projectiles at the police and ramming mills barriers towards them. It showed how many of those who entered the public entrance were violent. Those by the glass doors in camera 33 with the defendant became the most violent. The footage then showed how it emptied out and how the police regained control of the public entrance.

*Annex 2*

1. The screenshots in annex 2 are self-explanatory with the time of each screenshot visible and the defendant circled in blue. Those screenshots correspond with what he is described as doing in annex 1.
2. In some of the screenshots there is a yellow object circled in red hurled by someone other than defendant. The prosecution suggest it was an object set on fire before it was thrown right over the heads of all those police officers in front of the glass doors. It clearly bounces off the glass doors behind them and lands on the ground. It can then be seen in the reflection of the glass in some screenshots and certainly in the actual CCTV footage. It does not appear to flicker nor does it appear to cause concern to police officers who pass it. I cannot say it was an object on fire thrown at police but I can say from the way it bounced off the glass that it was a hard projectile.

*Annex 3*

1. The prosecution have included two live news videos, video 16 and video 17 from Now news. Again, in annex 3 the prosecution have described the events as captured by the live news feed.
2. In video 16 at 15:28 the protesters in front of the vehicular entrance began to dismantle and remove the barricades that they had previously built up. Even the reporter can be heard commenting on their intentions. At 15:29 the police can be heard shouting through a loudhailer to the protesters to not advance or attack the police. These verbal warnings continue. A yellow warning flag was held up. At 15:33 a large group of protesters began to charge the police checkline; instigated by several banging homemade shields on the ground in unison to appear to signal an advance and charge. Projectiles were thrown at the police at the same time, one protester was seen stabbing at the police with a metal pole. They retreated back but continued to throw hard objects despite verbal warnings.
3. At 15:39 the cameraman panned to a large pile of bricks dug up and collected. At this time the protesters again charged the checkline with mills barriers and hurled bricks and umbrellas at the police. They retreated again within a minute. The events continued in video 17 with the police then retreating behind the vehicular entrance. At 15:40, some protesters can be seen gathering bricks and moving towards the police. The police discharged rubber bullets presumably because verbal warnings and flags were ignored. Despite such a serious warning and deterrent, at 15:41 the protesters again charged at the police checkline that had retreated. At 15:43 the protesters are seen rushing into the vehicular entrance after breaking through the mills barriers set up by the police. The police are then forced to retreat by the oncoming crowd towards the back of the public entrance of the Legislative Council and the main glass doors.
4. The cameraman moved position and filmed into the public entrance from the direction of Lung Wo Road. The protesters rushed in and despite a police officer firing rubber bullets, they failed to stop. Several triangular battering rams consisting of mills barriers tied together were rammed at the police for maximum effect.
5. At 15:46 to 15:47 the footage shows teargas. This caused the majority of the protesters who had stormed the public entrance to turn and leave or back out. After the majority had left the public entrance, more teargas was fired. This is presumably to regain control of the entrance, keep the protesters from storming it again and gave the police an opportunity to re-form a checkline at the vehicular entrance which they did by 15:50. The police can be seen to regain control of the public entrance of the Legislative Council.

*Mitigation*

1. The defendant is now 22 years old and has a clear record in Hong Kong. He has received an education up to Form 6 and when he was arrested he was working as a lifeguard earning about $18,000 a month and had been working as such for about 5 years. He is single, lives with his parents and an elder brother.
2. In mitigation it was submitted that when the protesters charged at police checklines several times, the confrontation escalated and protesters including the defendant soon became emotional which resulted in the riot. The defendant was caught red-handed before he had a chance to run away from the scene and has pleaded guilty. His best mitigation is his plea of guilty. Defence counsel, Ms Nam has said everything she can say on his behalf.
3. I have read the many mitigation letters presented. I have a letter from the defendant himself, his parents, his long-term girlfriend and his employer. I have also many letters from his previous school principal, deputy principal and his many teachers; they span his lifetime at school. Mitigation letters from those that knew him at school total 16.
4. Defence counsel has reiterated his genuine remorse and the fact that his life changed forever when he was arrested that day. She submits the many letters from family and past teachers show his true character or rather show that his actions seen on CCTV on that day were out of character. His current employer has promised to re-employ him even if he has to serve a term of imprisonment.
5. In his own mitigation letter the defendant writes that he understands that violence is never the way to express one’s opinion. The rule of law is not to be undermined and all matters should be resolved by more appropriate means. He is sorry to have disappointed his parents, brother and his girlfriend. He acknowledges that he, I quote “broke the peace of Hong Kong. I set a bad example for those young people yearning for change. If I had the opportunity to talk to them myself, I would urge them not resort to violence”. He takes full responsibility for his actions and mistake. He hopes to be able to contribute to his own family and Hong Kong society after serving his sentence.

*Reasons for sentence*

1. The offence of rioting, contrary to section 19(1) and (2) of the Public Order Ordinance, will attract a maximum term of imprisonment on indictment of 10 years.
2. Freedom of peaceful assembly is guaranteed by the Basic Law and the Hong Kong Bill of Rights Ordinance. The freedom of assembly, like the freedom of speech is indispensable to the building of a civilised society and essential to social stability and progress. The freedom of peaceful assembly enables members of the public to voice their criticisms, air grievances and seek redress on views they hold. However, the freedom of assembly is not absolute. Once a protester becomes involved in violence or the threat of violence, a breach of peace, then that protester crosses the line between constitutionally protected peaceful assembly and demonstration to an unlawful activity which is subject to legal sanctions. There is such a line to protect public order because society is prone to descend into anarchy if public order is not preserved.
3. A riot has an immediate and serious impact on the rule of law. The rule of law is a core value of Hong Kong and the cornerstone of its success. The law ensures that public order and peace are preserved; not threatened by the use of violence. If public order is not preserved, this affects the freedom and rights of citizens.
4. Sentencing for the offence of riot involves the factor of deterrence. Ms Nam submits the defendant’s actions and participation was out of character. She submits his actions were spontaneous and not premeditated. He was caught up with the crowd when protesters tried to gain entry to the public entrance and emotions were running high. It is against that background that he joined in with what became a riot. He had no intention to cause harm to the public. She submits this is not the most serious case for an offence of this nature. I am urged to balance his remorse, guilty plea, young age and clear record with the need to deter and punish.
5. A sentence must not only seek to prevent the offender from reoffending, but also to give a proper warning to deter others from violating the law by breaking and disrupting public order in a like manner. Acts of violence or threats of violence will not and cannot be tolerated; such acts will attract a deterrent sentence to ensure that the public is protected. The Court of Appeal in *HKSAR v Leung Tin Kei and others* CACC 164/2018 reiterated that courts will impose a sentence that is punitive and sufficiently deterrent in accordance with principles established in applicable case law. It therefore follows that the submissions made on the defendant’s behalf carry little weight.
6. In this case, a deterrent sentence will reflect the fact that the defendant joined in an attempt to overpower police performing protective duties. Deterrence overrides the sentencing principle of rehabilitation in the prevailing circumstances including the increasing incidents of unrest and a rising number of large-scale public protests involving violence. This is clear from the Court of Final appeal in *SJ v Wong Chi Fung* 2018 21 HKCFAR 35.
7. The defendant was one of a large number engaged in a crime against peace, perhaps it was the sheer number with the defendant that gave him support and encouragement from being together with so many to riot. It is a common feature of mass disorder that if individuals within the crowd act violently, this will in turn inflame and encourage others to behave similarly. The harm done comes from the combined effect of what is done en masse.
8. For similar offences with different backgrounds and facts, the sentences in those cases do not provide a helpful guidance. Each charge must be considered on its own facts. What is a common factor is that the sentence should be punitive and sufficiently deterrent therefore, an immediate custodial sentence is inevitable.
9. The Court of Appeal in *Leung Tin Kei* set out various factors to be taken into account when passing sentence on the offence of riot. Courts must consider these factors and principles to arrive at a sentence according to the facts of each individual case. In that authority, the Court of Appeal upheld the sentences imposed. Those factors include:-
10. whether the riot was spontaneous or premeditated; if it was the latter, how detailed and precise the plan was;
11. the number of people engaged in the riot;
12. the degree of violence used by the rioters, including whether weapons were used and, if so, what kind and quantity of weapons;
13. the scale of the riot, including the time, location, the number of places and the area in which the riot took place;
14. the duration of the riot, including whether the riot was prolonged, and whether it still went on despite repeated warnings by the police or public officers;
15. the harm caused by the riot; for example, whether there was any loss or damage to properties and, if so, to what extent; whether anyone was injured and, if so, the number of injured persons and the degree of injury;
16. what imminence and gravity of threat was caused by the riot;
17. the nature and extent of nuisance caused to the public by the riot;
18. the impact on the relationship among community groups caused by the riot;
19. burden caused to public expenditure by the riot;
20. the offender’s role and group participation; for instance, apart from taking part in the riot, whether he had arranged, led, summoned, incited or advocated others to take part in the riot;
21. whether the offender committed any other crimes during the course of the riot.
22. In *Leung Tin Kei’s* case the riot took place on 9 February 2016 in Argyle Street. Although I have not seen any video footage of that riot, I read a description of the events set out in the reasons for sentence. In my view, this riot in the public entrance of the Legislature is more serious than the riot on Argyle Street.
23. I have been referred to *HKSAR v Tang Ho Yin* 2019 3 HKLRD 502 where the appellant was a man with a clear record and aged 24 at the time he committed the offence of riot. He pleaded guilty at the earliest opportunity and the sentencing judge took a starting point of five years’ imprisonment. The Court of Appeal considered the facts of that case, a riot between Shantung Street and Nathan Road on 9 February 2016 and although they said the appropriate starting point for that defendant was four years and six months, they dismissed the appeal.
24. In *HKSAR v Yeung Ka Lun* 2019 1 HKC 296, the Court of Appeal dealt with a riot that took place on the same day as the riot in *Tang Ho Yin* but in nearby Soy Street. That Court of Appeal described a starting point of five years’ imprisonment for the facts of that riot as appropriate.
25. In deciding the starting point of the offence, the extent of the overall violence involved must be considered, not the defendant’s individual acts in isolation. It has been suggested in mitigation that the defendant joined in at a later stage, his actions were spontaneous and the riot did not last very long. It was submitted he didn’t bring any weapons to the scene and although he was wearing a mask and helmet he did not intend to come to cause harm to anyone.
26. I quote from the authority *R v Caird and others* 1970 Cr App R 499 where LJ Sachs said at pages 507-508,

“those who choose to take part in such unlawful occasions must do so at their peril. … Any participation whatever, irrespective of its precise form, in an unlawful or riotous assembly of this type derives its gravity from becoming one of those who, by weight of numbers, pursued a common and unlawful purpose. The law of this country has always leant heavily against those who, to attain such a purpose, use the threat that lies in the power of numbers. ... In the view of this court, it is a wholly wrong approach to take the acts of any individual participator in isolation. They were not committed in isolation and, as already indicated, it is that very fact that constitutes the gravity of the offence.”

Therefore, in considering an appropriate sentence, I consider the extent of the overall violence involved, not the defendant’s individual acts in isolation.

1. Defence counsel has asked me to only consider the riot “outside the public entrance of the Legislative Council complex” as set out in the particulars of the offence. She has said that the charges at the police checkline at the vehicular entrance and behind the vehicular entrance should not be considered. I should only look at the scale of the riot in the public entrance to consider the culpability of the defendant.
2. In order to consider the culpability of the defendant or to assess the defendant’s participation, it is important to say something of the scene leading up to the riot. I quote again from LJ Sachs in *Caird* from page 504-505 where he says,

“There has been canvassed before this court the distinction between unlawful and riotous assemblies. Unlawful assemblies and riotous assemblies take many forms. … The moment when persons in a crowd, however peaceful their original intention, commence to act for some shared common purpose supporting each other and in such a way that reasonable citizens fear a breach of the peace, the assembly becomes unlawful. In particular that applies when those concerned attempted trespass. … or show preparedness to use force to achieve the common purpose. The assembly becomes riotous at latest when alarming force or violence begins to be used. …

The borderline between the two is often not easily drawn with precision. … It is the law – and, indeed, in common sense it should be the case – that any person who actively encourages or promotes an unlawful assembly or riot, whether by words, by signs or by actions, or who participates in it, is guilty of an offence which derives its great gravity from the simple fact that the persons concerned were acting in numbers and using those numbers to achieve their purpose.”

1. Those first two prior charges of the police checklines before the protesters break through the barriers and enter the public entrance gives the background of what happened that afternoon. It is artificial to only look at what happened inside the public entrance; it cannot be isolated. As LJ Sachs observed, the borderline between when an assembly becomes riotous is often not easily drawn with precision. In any event, it is part of the defendant’s mitigation that he got caught up with the crowd charging at the police, breaking through the checklines and entering the public entrance. This meant he was present when he says emotions were running high and it affected his behaviour.
2. In light of the aforesaid and taking into account the factors mentioned in *Leung Tin Kei* by the Court of Appeal as well as the CCTV footage, I take the view that the violence was large in scale and very serious. It can be seen to escalate. By the time there was a 3rd charge at the police checkline they were backed up against a railing in front of the doors to the Legislative Council.
3. The degree of violence used became more extreme and more serious with every charge. I take into account that during the violence, hard objects were aimed at the police including pavement bricks, full water bottles and other hard unidentifiable objects. Once inside the public entrance, mills barriers designed for crowd control were used as battering rams against the police; they were repeatedly rammed. Several people with the defendant rammed the same barrier with as much strength as they could muster. This is clear from the CCTV footage. The officers in front of the glass doors were physically backed up against a railing. The violent behaviour and subsequent consequences could have been more serious if it had gone on any longer. It was cut short by teargas that caused the rioters to disperse and most of the crowd to leave the public entrance area. Such violence cannot be tolerated by a civilised and diversified society.
4. I repeat, I will consider the extent of the overall violence involved, not the defendant’s individual acts in isolation in order to decide a starting point. His behaviour seen on CCTV shows he endorsed the offence and actively took part in it. His culpability is significant.
5. What I also consider relevant when I take into account the factors set out in *Leung Tin Kei*, is that the crowd directly in front of the police and the vehicular entrance confronted the police for quite some time before the riot. The police made repeated announcements and raised flags to warn the crowd not to charge the checkline. The crowd chose to ignore the repeated advice, announcements and warnings. The news footage shows people scolding police officers incessantly, stirring up emotions of people present and causing emotions to rise. Even after the first charge when the police discharged rubber bullets, the crowd did not stop or dissipate but charged again. It is relevant just how many people poured into the public entrance after the police checkline was broken through, clearly outnumbering the police making the whole scene potentially even more dangerous.
6. Was there any premeditation or was it spontaneous? Looking at the crowd in front of the vehicular entrance, almost everyone was wearing masks, goggles and helmets to hide their identities, some were wearing teargas masks. Many were holding home-made shields. Umbrellas were seen in the news footage being collected from the back of the crowd and carried to the protesters in the front like a conveyor belt as were more mills barriers after the first charge. Bricks in the pavements were dug up and piled up ready to be hurled at the police. A path was cleared to make a charge followed by signals when to charge at the police checkline. Triangular battering rams were made up before the public entrance was charged. All this behaviour and action demonstrated some premeditation of violence. To make matters worse, prior to the first planned charge there appears to be no provocation or particular confrontation that preceded it. It cannot be said that the violence and rioting that occurred was spontaneous.
7. I also take the view that a repeated attack on the police in the due execution of their duties, their duty to protect the Legislative Council, which led to a riot at the doors of the Legislature of Hong Kong was a direct attack on the rule of law which undoubtedly caused harm. Such criminal conduct showed no respect for law and order nor the safety of law enforcement officers.
8. I have also considered the scale of the disturbance that afternoon caused to the public, the harm to society, including the relation between the police and the public as well as public expenditure resulting from it. Without a doubt, the present case was a very serious one.
9. Accordingly, the defendant’s mitigation and personal circumstances are not mitigating factors of any significant weight. His plea of guilty does demonstrate remorse and I am sure he is now regretting his actions and participation. I note he apologises to his family and loved ones; I am conscious of their undoubted suffering as a result of his participation.
10. It is not an inconsiderable task to impose a punitive and deterrent sentence on a young man with a previous good character but this present case I repeat, is a very serious one and I must give proper weight to public interest.
11. Having considered all the relevant factors against the circumstances, I am of the view that the appropriate starting point for taking part in this riot is 6 years’ imprisonment after trial. The defendant pleaded guilty at the earliest opportunity and is therefore entitled to the usual full discount of one third. Accordingly, I reduce the starting point by two years and sentence the defendant to 4 years’ imprisonment.

( A J Woodcock )

District Judge