### FAMC Nos. 48 and 49 of 2019

[2020] HKCFA 14

### FAMC No. 48 of 2019

IN THE COURT OF FINAL APPEAL OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

MIsCELLANEOUS PROCEEDINGS nO. 48 OF 2019 (cRIMINAL)

(ON APPLICATION FOR LEAVE TO APPEAL FROM

CACC NO. 38 OF 2017)

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BETWEEN

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| HKSAR | Respondent |
| and |  |
| CHAN SIU TAN (陳少丹) (D5) | 5th Applicant |

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### FAMC No. 49 of 2019

IN THE COURT OF FINAL APPEAL OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

MIsCELLANEOUS PROCEEDINGS nO. 49 OF 2019 (cRIMINAL)

(ON APPLICATION FOR LEAVE TO APPEAL FROM

CACC NO. 38 OF 2017)

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BETWEEN

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| HKSAR | Respondent |
| and |  |
| WONG CHO SHING (黃祖成) (D1) | 1st Applicant |
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| LAU CHEUK NGAI (劉卓毅) (D2) | 2nd Applicant |
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| PAK WING BUN (白榮斌) (D3) | 3rd Applicant |
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| KWAN KA HO (關嘉豪) (D6) | 6th Applicant |
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(HEARD TOGETHER)

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| Appeal Committee: | Chief Justice Ma, Mr Justice Ribeiro PJ and  Mr Justice Cheung PJ |
| Date of Hearing and Determination: | 7 April 2020 |
| Date of Reasons for Determination: | 17 April 2020 |

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| **REASONS FOR DETERMINATION** |

**The Appeal Committee:**

1. After hearing submissions, we dismissed these applications for leave to appeal for reasons to be provided later. These are our reasons.
2. The applicants, who were serving police officers, were convicted after trial before HH Judge Dufton[[1]](#footnote-1) of assault occasioning actual bodily harm against Tsang Kin Chiu (“Tsang”) on 15 October 2014, in the course of a police operation conducted during what have become known as the “Occupy Central” protests. The 5th applicant was also convicted of an additional charge of common assault against Tsang later that day, inside the Central Police Station. Their appeal to the Court of Appeal[[2]](#footnote-2) was dismissed, as was their application for certification. They now renew their application before the Appeal Committee, seeking certification and leave to appeal in respect of four questions and leave to appeal on two grounds on the substantial and grave injustice basis.

Question 1

1. Question 1 states:

“When the authenticity (and thus relevance) of video recorded material is in issue, does the test for admissibility require the party seeking to admit it to establish, to any legal standard, that the material is in fact authentic or is it sufficient merely to ask whether the disputed evidence, if believed by the tribunal of fact, would be sufficient to prove authenticity beyond a reasonable doubt?”

1. This Question relates to the admissibility of video recordings which were the central component of the prosecution’s evidence relied on to prove the assault against Tsang. The proposition which underlies it is that the Judge and the Court of Appeal adopted erroneous approaches to the test of such admissibility, in particular as to the “legal standard” required to be satisfied and as to the Judge’s alleged reliance on an “if believed” test.
2. It is important to note that these issues are raised in the context of the Judge having acceded to the parties’ request to conduct a voire dire.[[3]](#footnote-3) His Honour noted:

“Notwithstanding witnesses would need to be recalled all counsel agreed that the court should first determine the admissibility of the video footage, photographs and CCTV recordings by way of voir dire and not adopt the alternative procedure.”[[4]](#footnote-4)

1. As the Full Court held in 1970,[[5]](#footnote-5) although it was common practice to conduct a voire dire in the District Court, the court is not obliged to do so and what the Judge in the present case referred to as the “alternative procedure” with suitable safeguards for the defendant[[6]](#footnote-6) was approved. This was re-affirmed by the Full Court in *The Queen v Leung Siu-ng*,[[7]](#footnote-7) which noted that the alternative procedure often commended itself because of the inconvenience and a certain artificiality in holding a voire dire in trials without a jury:

“The [voire dire] procedure ... requires that the special issue be abstracted from all the other issues of fact and law which are subsumed under the general issue and that it be dealt with by way of a separate trial in the course of which the wider trial is arrested and inquiry into all the other questions at issue is suspended until the special issue has been resolved. It is, no doubt, the inconvenience of the voir dire and a certain artificiality in the distinctions which have to be made concerning the evidence given on the special and general issues which have, especially since *Ho Yiu-fai's* case, led to the increasing employment of the alternative procedure in trials without a jury in this territory.”[[8]](#footnote-8)

1. Notwithstanding possible inconvenience, the voire dire procedure, including in cases tried without a jury, has the benefit of enabling the defendant to know the strength of the prosecution case at an appropriate stage and thus to decide whether to give evidence in his or her own defence, thus giving effect to “the cardinal principle that the prisoner should not be called upon to make his defence until the body of the evidence standing against him has been defined”.[[9]](#footnote-9)

“If believed”

1. Question 1 seeks to suggest that the Judge applied the wrong test because he erroneously thought “it sufficient merely to ask whether the disputed evidence, if believed by the tribunal of fact” as the basis for proving “authenticity beyond a reasonable doubt”. This is a misreading of the Reasons for Verdict.
2. This can be illustrated by examining the Judge’s treatment of the evidence regarding the TVB footage.[[10]](#footnote-10) The videos relied on by the prosecution were downloaded by a police sergeant from YouTube and TVB’s website. He was unable to say who had uploaded it to YouTube or what may have happened to the footage before uploading.[[11]](#footnote-11) The original footage was not obtained from TVB because of Barnes J’s earlier refusal to order production.[[12]](#footnote-12) It was in those circumstances that the applicants challenged the authenticity of the footage relied on.
3. The evidence on authenticity considered by the Judge (adopting the voire dire procedure) consisted in the first place of the testimony of three TVB witnesses:
   1. Mr Sum Ka Hung (PW9), a senior technician, who explained the process whereby footage filmed by cameramen was transmitted in real time by fibre optical cable or TVU and automatically recorded onto the server at TVB’s news department; how the signal which he had monitored was normal and not interfered with; how the files created were password protected and how he and his colleagues were unable to make any alterations to the files stored in the server.[[13]](#footnote-13)
   2. Mr Lam Ka Yu (PW10), a senior librarian, who testified that he retrieved the footage from the server and copied it onto Blu-ray discs without altering it. He said that he had compared the discs with the server file and found the content to be identical. He then stored the discs in the library and subsequently handed them to Mr Wong.[[14]](#footnote-14)
   3. Mr David Wong (PW8), the news production manager, who testified that he had compared the footage uploaded to the TVB website with the relevant Blu-ray disc. The main difference involved the elimination of certain footage from the uploaded content consisting of shots where the group being filmed were blocked by a van. He provided a commentary on the videos which were played in court, indicating that apart from very minor differences, they were the same as the material in the library.[[15]](#footnote-15)
4. Having heard the witnesses on the voire dire, the parties having agreed that the evidence (heard over 10 days) should be taken into consideration on the general issue,[[16]](#footnote-16) the Judge “found all the video footage, photographs and CCTV recordings relevant and prima facie authentic”.[[17]](#footnote-17) In his oral ruling he held[[18]](#footnote-18) that the footage was relevant and prima facie authentic, and so admissible:

“I have carefully considered all the evidence and submissions of counsel. I find all the video footage, the photographs and CCTV recordings relevant and prima facie authentic. I rule all the video footage, the photographs and the CCTV recordings admissible in evidence, each video footage, each photograph and CCTV recordings considered separately.”

1. Later, in his written Reasons for Verdict, after summarising the evidence, the Judge held:

“I was satisfied, *if believed*, that the evidence of Mr Sum; Mr Lam and David Wong was sufficient to prove the authenticity of the TVB footage beyond reasonable doubt. I therefore ruled the TVB footage prima facie authentic and admissible in evidence.”[[19]](#footnote-19) (Italics supplied)

1. The Judge also relied on Tsang’s evidence:

“In addition, as summarised earlier the TVB footage P1(b) and P1(c), showing the escort and the assault at the substation was played to Tsang, who confirmed the footage was consistent with his recollection of the events that night. Tsang also identified himself as the person being carried in the TVB footage P1(h). I was satisfied the evidence of Tsang, *if believed*, was also sufficient to prove the authenticity of the TVB footage beyond reasonable doubt.”[[20]](#footnote-20) (Italics supplied)

1. These statements plainly show that the Judge’s “if believed” statement was made at the voire dire stage. He was drawing a distinction between himself as the tribunal considering the evidence for the purposes of admissibility and himself as the tribunal determining the general issue of guilt. At the voire dire stage, he applied a “prima facie authentic” test. If he had found that the evidence did not establish that the video footage was prima facie authentic, he would have ruled it inadmissible and the prosecution case would probably have collapsed. But, having ruled the evidence admissible, he went on to find, in his capacity as the tribunal determining guilt, that the evidence established authenticity beyond reasonable doubt.[[21]](#footnote-21)
2. His Honour’s “if believed” formulation is derived from *Cross & Tapper on Evidence*,[[22]](#footnote-22) in which (in a jury trial context) the “if believed” statement contrasts the role of the judge at the voire dire stage with the jury’s ultimate decision on guilt. The learned authors stated:

“It is submitted that the better view is that the requirement is no different from that applying to the satisfaction of an evidential burden, namely whether the evidence, *if believed by the jury*, would be sufficient to prove the matter asserted to the standard required to satisfy the legal burden, namely beyond reasonable doubt, when borne by the prosecution in a criminal case. This involves no usurpation of the function of the jury since the jury is free not to believe the evidence, and may well not do so after taking into account its contravention by the other side. Such a view is in complete harmony with the ordinary rules on the discharge of an evidential burden, the determination of whether or not there is a case to answer, and the proper distribution of functions between judge and jury.” (Italics supplied)

1. Thus, when the Judge’s use of the “if believed” formula is properly understood, Question 1 is obviously misdirected and based on a misapprehension of the Judge’s ruling. The Judge was *not* suggesting that “merely to ask whether the disputed evidence, if believed by the tribunal of fact, would be sufficient to prove authenticity beyond a reasonable doubt” and thus to establish admissibility at the voire dire stage. He was assessing whether the evidence established prima facie authenticity such that it merited further assessment for the purposes – if believed – of proving guilt beyond reasonable doubt on the general issue.
2. Since the Judge went on to find that the evidence not only established prima facie authenticity but established authenticity beyond reasonable doubt, the application for leave to debate on further appeal whether he had or had not correctly adopted a “prima facie evidence” standard rather than a “balance of probabilities” (or some other) standard to determine admissibility at the voire dire stage is academic for all practical purposes. As Macrae VP, writing for the Court of Appeal, pointed out in refusing leave to appeal:

“In any event, the judge (sitting as both judge and jury) was ultimately to find, following a painstaking assessment of the evidence, which the Court also itself conducted, that the authenticity of the impugned material was proved beyond reasonable doubt. Accordingly, the argument was said by the Court to be rather academic.”[[23]](#footnote-23)

The applicable legal standard

1. In Hong Kong, the “prima facie evidence” standard is clearly established as applicable where a challenge is made to the admissibility of video recordings on the basis of lack of authenticity.[[24]](#footnote-24) It is the legal standard which justifies the issue going forward for determination of the general issue of guilt.
2. In *R v Robson*,[[25]](#footnote-25) a case involving the authenticity (or as it was there put, the “originality”) of audio tape recordings, Shaw J explained the position, distinguishing between the voire dire stage and determination of the general issue, as follows:

“... in a recent criminal trial, *Reg. v Stevenson* [1971] 1 WLR 1, ... it was contended that the standard of proof of originality was that which applied to any issue which had to be resolved by the jury in such a trial, namely, proof beyond reasonable doubt. This is, of course, right if and when the issue does come before the jury as a matter they have to decide as going to weight and cogency. In the first stage, when the question is solely that of admissibility — ie whether the evidence is competent to be considered by the jury at all — the judge, it seems to me, would be usurping their function if he purported to deal with not merely the primary issue of admissibility but what is the ultimate issue of cogency. My own view is that in considering that limited question the judge is required to do no more than to satisfy himself that a prima facie case of originality has been made out by evidence which defines and describes the provenance and history of the recordings up to the moment of production in court. If that evidence appears to remain intact after cross-examination it is not incumbent on him to hear and weigh other evidence which might controvert the prima facie case. To embark on such an inquiry seems to me to trespass on the ultimate function of the jury.”[[26]](#footnote-26)

1. *Robson* was endorsed by the Northern Irish Court of Appeal in *R v Murphy*,[[27]](#footnote-27)adopting a prima facie evidence standard at the admissibility stage and holding that authenticity, “like most facts” may be proved circumstantially. The above passage in *Robson* was also approved by the English Court of Appeal in *R v Gibbins*.[[28]](#footnote-28)
2. The Court of Appeal in *HKSAR v Lee Chi Fai*,[[29]](#footnote-29) likewise endorsed Shaw J in *Robson* as espousing a “prima facie authentic” test and held that on the facts of *Lee Chi Fai*:

“... the Judge had ... ample material on which to arrive at the conclusion that Exh.P10 was *prima facie* authentic and ultimately to arrive, as he did, at the conclusion that it was the original tape with which no one had tampered. The circumstantial evidence in this regard was very strong.”[[30]](#footnote-30)

1. And in *HKSAR v Yeung Ka Ho*,[[31]](#footnote-31) a case concerning voice identification from tape recordings, the Court of Final Appeal noted with approval that *Lee Chi Fai* had held thatauthenticity could be established on a prima facie basis with the help of circumstantial evidence.[[32]](#footnote-32) It also approved *Murphy* as a case that contains “much of assistance”.[[33]](#footnote-33)
2. There is accordingly no basis for granting leave to appeal either on the “if believed” issue or on the question of the applicable legal standard and we refused certification and leave in respect of Question 1.

Question 2

1. Question 2 asks:

“When the authenticity/relevance (and thus admissibility) of various video footages is in issue and where the original footage is in existence and obtainable by the prosecution:-

(1) is it permissible in law to use the impugned footages to authenticate one another?

(2) is it permissible in law first to assess and find one of the footages to be ‘prima facie’ authentic and then use that footage as a control sample to authenticate other impugned footages?

(3) *or* does the law require the authenticity of the comparator footage to be proved beyond doubt?”

1. We agree with the reasons given by Macrae VP for refusing to certify this Question. First, as we have noted above, it is established that the authenticity of a video recording can be proved circumstantially.[[34]](#footnote-34) Secondly, whether any particular comparison is legitimate is a fact-specific question. As Macrae VP points out, Question 2:

“... does not raise a point of law but, rather, a factual complaint as to whether the circumstantial evidence, painstakingly evaluated and relied upon by the judge (and examined by this Court), did in fact authenticate the impugned material.”[[35]](#footnote-35)

1. It is also not reasonably arguable that in deciding on admissibility, only a comparator proven to be authentic beyond reasonable doubt can be used. Such rigidity in approaching circumstantial evidence cannot be justified. And as noted above, in the voire dire context, the court is not concerned with making definitive findings but with deciding whether the impugned evidence is sufficient to justify its reference to the tribunal charged with deciding the general issue of guilt.

Question 3

1. Question 3 is as follows:

“Where *original* video footage is in existence, readily obtainable by the prosecution and where any examination of it would instantly demonstrate how relevant and important it is to the issue of authenticity/relevance (so that its production should and could be made by Court order) is it compatible with the requirements of a fair trial:-

(1) to permit the Prosecution to use internet-downloaded, edited video footages which *purport* to be the same as the original video footage notwithstanding the former’s authenticity is challenged?

(2) to permit a prosecution witness (who alone had had access to the original video footage) to give **‍**hearsay evidence of his own comparison between **‍**the original video footage and the edited, **‍**downloaded footages in support of the **‍**authenticity of the internet-footages, in circumstances where neither the Judge nor the defence had access to the original video footage or were privy to such comparison exercise so that the witness’s evidence was incapable of effective challenge?”

1. As Macrae VP pointed out:

“At no stage of the trial proceedings did any of the defendants’ counsel (which included highly experienced Senior Counsel and junior counsel from the criminal Bar) ever mount any application for the originals to be produced at trial; nor did anyone ever make any objection to the ‘open source’ material being adduced by the prosecution; nor was any objection made to the admissibility of the evidence of PW8; nor was an application for a stay of proceedings mounted on the basis that a fair trial was impossible without the original tape recordings...”[[36]](#footnote-36)

1. There was no suggestion of flagrant incompetence on the part of trial counsel and, as the Court of Appeal thought obvious, it was a tactical decision by trial counsel to take advantage of the absence of the originals and its ramifications as they conceived them to be.[[37]](#footnote-37)
2. The reference to the prosecution witness is to Mr David Wong (PW8) whose evidence is mentioned above. We do not accept that his evidence was hearsay as he was testifying about comparisons he had made between different video recordings. He was not purporting to give second hand evidence about any past events such as those depicted in the challenged footage.
3. Whether and to what extent the absence of original video recordings affects the sufficiency of the evidence depends on the nature and quality of the available evidence for assessing authenticity taken as a whole. Question 3 therefore does not raise any point of law of great and general importance and its answer is necessarily fact-specific. We accordingly refused certification and leave.

Question 4

1. Question 4 asks:

“Absent production of the (readily available) original video footages, was the totality of evidence before the trial Judge capable in law of proving the authenticity of the disputed, edited video footages beyond a reasonable doubt?”

1. This is obviously not a question of law but an impermissible invitation to re-assess the weight of the evidence. Certification and leave were therefore refused.

Substantial and grave injustice

1. All the applicants also apply for leave on the “substantial and grave injustice” basis essentially seeking to contend that the approach to determining admissibility adopted by the Judge and upheld by the Court of Appeal was erroneous. This is premised on the propositions which underlie the Questions discussed above which we have rejected as based on a misapprehension of the Judge’s approach; as involving an academic exercise given the Judge’s finding that authenticity had been established beyond reasonable doubt; and as raising purely fact-specific questions. The approach of the Courts below involved no departure from established norms capable of founding leave on the substantial and grave injustice basis.
2. The 5th applicant also seeks leave to argue that, having rejected Tsang’s evidence regarding an alleged assault by police officers at the time of his arrest, it was unsafe for the Judge to have relied on his evidence in support of the authenticity and admissibility of the video recordings in question. He also seeks leave to argue in relation to Tsang's evidence regarding the charge against him for assault that if leave were granted on the first issue under the substantial and grave injustice basis, then it would also be arguable that it was unsafe for the Judge to have relied on his evidence alone to convict him of this charge. He accepts that the leave sought on this issue is "wholly contingent" on leave being granted on the first issue. In view of our refusal of leave on the first issue under the substantial and grave injustice ground, it must follow that leave must be refused on this second issue as well. In any event, as the Court of Appeal noted, it is trite law that a judge or jury may accept some part of a witness’s evidence and reject other parts.[[38]](#footnote-38) And as the respondent point out, the Judge, who was best placed to assess Tsang’s credibility and reliability, thoroughly evaluated his evidence in the light of various attacks made on him throughout the trial and was entitled to make his findings on the basis of the totality of the evidence adduced.
3. For the foregoing reasons, we dismissed these applications for leave to appeal.

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| (Geoffrey Ma)  Chief Justice | (R A V Ribeiro)  Permanent Judge | (Andrew Cheung)  Permanent Judge |

***FAMC No. 48 of 2019***

Mr Edwin Choy SC and Mr Philip C.L. Wong and Mr Ip Fung Shing, instructed by Wong Poon Chan Law & Co., for the 5th Applicant (D5)

Mr David Leung SC, DPP, Ms Clara Ma SPP and Ms June Wong PP, of the Department of Justice, for the Respondent

***FAMC No. 49 of 2019***

Mr Clive Grossman SC and Mr Benson Tsoi, instructed by Kwok, Ng & Chan, for the 1st, 2nd, 3rd and 6th Applicants (D1, D2, D3 and D6)

Mr David Leung SC, DPP, Ms ‍Clara Ma SPP and Ms June Wong PP, of the Department of Justice, for the Respondent

1. DCCC 980/2015 (Reasons for Verdict: 14 February 2017). [↑](#footnote-ref-1)
2. Macrae VP, McWalters JA and Poon JA [2019] HKCA 839 (26 July 2019). [↑](#footnote-ref-2)
3. The spelling “voir dire” is frequently used but “voire dire” is preferred in this Reasons for Determination. It appears that “voire” is derived from the Norman French: “Voire dire (Norm. Fr. *voire*, true; *dire*, to speak; Fr. *vrai dire*; Lat. *veritatem dicere*, to tell the truth)”. (Jowitt’s Dictionary of English Law, 5th Ed (Sweet & Maxwell, 2019) pp 2628-2629). This is traceable to at least the 18th Century: See T Cunningham, A New and Complete Law Dictionary (3rd Ed, Vol. II, 1783): “Voire dire, (*Veritatem dicere*,) When it is prayed upon a trial at law, that a witness may be sworn upon a *voire dire*; the meaning is, he shall upon his oath speak or declare the truth, whether he shall get or lose by matter of controversy; and if he be unconcerned his testimony is allowed, otherwise not.” In some other dictionaries, the two spellings are treated as alternatives but the derivation from the Norman French, meaning “speak the truth”, is endorsed. See eg, Black’s Law Dictionary, 11th Ed, Ed Bryan A Garner, at p 1886, which traces the phrase to the 17th Century; A Dictionary of Law 9th Ed, Ed Jonathan Law, (OUP) at p 719; Osborn’s Concise Law Dictionary, 12th Ed, Ed Mick Woodley (Sweet & Maxwell) at p 447 and Bryan A Garner, Garner’s Dictionary of Legal Usage, 3rd Ed, at p 933. [↑](#footnote-ref-3)
4. Reasons for Verdict §25. [↑](#footnote-ref-4)
5. *Ho Yiu-fai v The Queen* [1970] HKLR 415 at 420 per Briggs, Mills-Owens and Pickering JJ. [↑](#footnote-ref-5)
6. Three main requirements of the alternative procedure were identified: “(l) to ensure that the defence is not left with the wrong impression [that his right of cross-examination is limited to the issue of admissibility]; (2) to ensure that the accused is heard on the issue of admissibility if he so wishes and (3) to ensure that a ruling on the admissibility is made at or before the close of the case for the prosecution so that the accused may be aware of the strength of the case against him”: *Ibid* at 422. [↑](#footnote-ref-6)
7. In a judgment delivered by McMullin J, dated 18 September 1974 for the Court, but reported only in [1992] 2 HKCLR 1. [↑](#footnote-ref-7)
8. *The Queen v Leung Siu-ng* [1992] 2 HKCLR 1 at 5. [↑](#footnote-ref-8)
9. *Ibid.* [↑](#footnote-ref-9)
10. A similar approach was adopted regarding video recordings from other sources. [↑](#footnote-ref-10)
11. Reasons for Verdict §§90, 92. [↑](#footnote-ref-11)
12. See Court of Appeal [2019] HKCA 839 at §§10-11, 115-124. [↑](#footnote-ref-12)
13. Reasons for Verdict §§93-98. [↑](#footnote-ref-13)
14. Reasons for Verdict §§99-103. [↑](#footnote-ref-14)
15. Reasons for Verdict §§104-117. [↑](#footnote-ref-15)
16. Reasons for Verdict §§12 and 27. [↑](#footnote-ref-16)
17. Reasons for Verdict §27. [↑](#footnote-ref-17)
18. On 28 June 2016, Day 17. [↑](#footnote-ref-18)
19. Reasons for Verdict §118. [↑](#footnote-ref-19)
20. Reasons for Verdict §119. [↑](#footnote-ref-20)
21. Reasons for Verdict §§164-165. [↑](#footnote-ref-21)
22. 12th edition, at p 184, in the current 13th edition, at p 187. The Judge also referred to O’Floinn and Ormerod, “Social Networking Material as Criminal Evidence” in [2012] Crim LR 486, which is to like effect. [↑](#footnote-ref-22)
23. Poon Ag CJHC, Macrae VP and McWalters JA [2019] HKCA 1204 at §4. [↑](#footnote-ref-23)
24. Note that a voire dire on the admissibility of an admission or confession involves different considerations and may require, for instance, proof of voluntariness beyond reasonable doubt: *R v Robson* [1972] 1 WLR 651 at 654. [↑](#footnote-ref-24)
25. [1972] 1 WLR 651. [↑](#footnote-ref-25)
26. *Ibid* at 653-654 and see also 655H-656A. It may be noted that certain commentators and in some subsequent decided cases including cases from Australia, New Zealand and Canada and, in Hong Kong, *Choi Kit Kau v R* [1980] HKLR 433, *Robson* has been taken to be a case espousing a “balance of probabilities” standard for deciding upon admissibility at the voire dire stage. While it is true that Shaw J actually adopted that standard in *Robson*, he did so at the express request of both parties but made it clear that in principle he regarded the applicable standard to be that requiring “prima facie evidence” of authenticity. [↑](#footnote-ref-26)
27. [1990] NI 306 at 342-343. [↑](#footnote-ref-27)
28. [2004] EWCA Crim 311 at §§51-54. [↑](#footnote-ref-28)
29. [2003] 3 HKLRD 751. [↑](#footnote-ref-29)
30. At §37, per Stuart-Moore VP. [↑](#footnote-ref-30)
31. (2013) 16 HKCFAR 609. [↑](#footnote-ref-31)
32. *Ibid* at §§43 and 52. [↑](#footnote-ref-32)
33. *Ibid* at §54. [↑](#footnote-ref-33)
34. Court of Appeal [2019] HKCA 1204 at §§6-7. [↑](#footnote-ref-34)
35. *Ibid* at §8. [↑](#footnote-ref-35)
36. *Ibid* at §10. [↑](#footnote-ref-36)
37. Macrae VP, McWalters JA and Poon JA [2019] HKCA 839 at §122. [↑](#footnote-ref-37)
38. *Ibid* at §164. [↑](#footnote-ref-38)