

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

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CR 84 of 2019

BETWEEN:

R E X

- Prosecution

AND:

VAHA PALEI

- Accused

BEFORE THE HON. JUSTICE CATO

Counsel: Mr. J. Fifita for the Prosecution

Mr. S. Tu'utafaiva for the Accused

VERDICT

- [1] The accused, Vaha Palei, was charged with one count that on the 30th May 2018 at Te'ekiu, he did knowingly and without lawful excuse possess a class A drug methamphetamine. This was a Judge alone trial that commenced on Monday the 1st July, 2018 and ended on 8th July 2018 when I retired to deliver my verdict.
- [2] The accused did not give or call evidence.
- [3] At the conclusion of the evidence, in his closing submissions, Mr Tu'utafaiva raised a sole submission that continuity of the drug from search to the analyst certificate as to weight and nature of the drug being confirmed to be methamphetamine had not been established and that there had not been given any satisfactory explanation given as to the variations in weight of the methamphetamine from those found in Tonga and the lower figure given in the analyst's certificate. He submitted overall that this was unsatisfactory and that I should not be satisfied beyond a reasonable doubt that the Crown has established continuity and accordingly had not established possession of methamphetamine.
- [4] Mr Fifita submitted that the Crown had established beyond any reasonable doubt that the drug was methamphetamine, and that any disparity in weight was of no

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consequence or irrelevant. He carefully took me through the evidence relating to chain of proof.

[5] The evidence was in a narrow compass and revealed to my satisfaction that police pursuant to a search warrant issued on the 29th May 2018 by a Magistrate searched the premises owned by a third party but occupied by the accused. Mistakenly, the warrant had referred to the power of search to enter property, residential house belonging to a third party where the accused resided and the vehicle of the third party. There was evidence given that the third party had for many years lived overseas. The target including the house and car was plainly not the third party but intended to be the accused. During the course of the search, which originated as a search for stolen property, the accused was seen to enter an adjacent property belonging to his sister and park close to the target property. Police drove in behind him and a search was commenced of the car. In the car, driven by the accused was located a significant amount of methamphetamine by officer Vaha Taufua who was, together with other officers including constable Veia and constable Talamai nearby. Talamai was the officer in charge of the search who had obtained the warrant. I consider that there was an honest mistake made in the wording of the warrant, and police acted within the terms of the warrant as they believed them to be. In any event, no complaint was advanced by Mr Tu'utafaiva about the regularity or legality of the search or whether the location of the drug went beyond the powers given in the search warrant.

[6] The drug was located in two bags, one a large bag and the other a smaller bag. Officers Taufua and Veia seized the bags of drugs and they were later given to exhibits officer WPC Otuhouma who in turn delivered them to PC Tapueluelu for weighing at the Nukunuku police station. The weight of the drug was then found to be 21.66 grams. The drug was then taken from Nukunuku by WPC Otuhouma to the drugs task force at the Central police station for safekeeping and signed in as exhibit 41/18 in the drugs Register, a copy of which was produced in evidence. The drug was given to PC Pousima by WPC Otuhouma on the 21st June 2018 at the Central Police Station and the latter is also noted in the Register. Later, it appears that it was weighed again, but there is no record of the amount on this occasion. It was weighed a third time, however, pursuant to a direction given by a senior officer on the 19th July 2018 by PC Manumu'a and found to be 21.71 grams. I infer that it was he who probably unwisely altered the record of weight originally entered as a lower figure in the Register, but I do not infer anything sinister about this. Later, PC Pousima gave

the drug (exhibit 41/18 in the Register) to PC Leveni and PC Halatoa Taufu on the 8th November, for carriage to New Zealand for testing. It was there taken and deposited first at the Manukau Police Station by Taufu and uplifted and then taken by him to the ESR where it was analysed. The certificate of the analysis mentions that a number of items were taken from a sealed bag and one was 41/18 operation Fuekafa. Fuekafa operation (suspect being the accused) was itemised as 11 in the Tonga police force exhibits sent from Tonga for Laboratory examination. The substance sent for analysis in two bags were said to be crystals weighed as 18.8 grams in one bag and from another bag 1.6 grams, a total of 20.4 grams, and were analysed as methamphetamine. I do not consider any difference in weight to be a material or relevant concern.

- [7] I am satisfied beyond reasonable doubt that the drug said to be operation Fuekafa and the exhibit number 41/8 in the ESR relates to the same substance seized by Police from the car parked adjacent to the accused's property of which he was the driver and included in the drug Register as 41/8. I am satisfied beyond reasonable doubt that the drug located in the vehicle in two bags was methamphetamine and is the same drug as that analysed by ESR. I am satisfied beyond reasonable doubt that the accused at the material time, the 30th May 2018, was in possession of it meaning it was in his custody and control in the absence of any other explanation for its presence in his car.
- [8] I, accordingly, find the accused guilty of possession of methamphetamine and he is convicted.

The seal of the Supreme Court of Tonga is circular, featuring a central emblem with a crown and a cross, surrounded by a wreath. The words "SUPREME COURT TONGA" are inscribed around the perimeter. A signature in black ink is written over the seal.
C. B. Cato
JUDGE

NUKU'ALOFA: 9 July 2019