

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

Scan, email, upload +  
file 25/11/19

CR 42 & 43 of 2019

BETWEEN:

R E X

Prosecution

AND:

VILIAMI FALEVAI and LANGI TA'AI

Accused

---

VERDICT

---

BEFORE: JUSTICE CATO

Counsel: ✓ Mr. T. 'Aho for the Prosecution  
Mr. Falevai – Self-represented  
Mr. S. Tu'utafaiva for the Mr. Ta'ai

Date of Verdict: 22 November 2019

1. The accused, Viliami Falevai, faced at his trial one count of possession of an illicit drug namely methamphetamine contrary to section 4 (a) of the Illicit Drugs Control Act.

A second count of possession of a small amount of cannabis was withdrawn by the Crown before the trial commenced and that count was dismissed from the indictment. He is accordingly acquitted of that count.

2. The accused, Langi Ta'ai, faced one count of possession of an illicit drug contrary to section 4 (a) of the Illicit Drugs Control Act, namely methamphetamine.
3. Mr Ta'ai and Mr Falevai were jointly tried of charges arising from a search of Mr Ta'ai's residence at Ngele'ia on the 10<sup>th</sup> August, 2018. The trial lasted several days

1  
rec'd 22/11/19  
llc

between the 12<sup>th</sup> November 2019 and the 18<sup>th</sup> November 2019, and I reserved my verdicts until today.

4. The evidence was in a narrow compass. On the 10<sup>th</sup> August 2018, the police conducted a search of Mr Ta'ai's residence. The officer who was in charge, officer Leveni gave evidence that he and another officer got into the house through a window that led into the lounge room, and saw Mr Ta'ai coming from the direction of a bathroom.
5. Evidence was given of a number of cars parked inside a fence. Police had received information that drug activity was going on at the location and had reacted quickly entering the property without warrant. No objection was made by the defence to the fact that the search was without warrant.
6. I am satisfied on the evidence that I heard that the accused Mr Falevai had been apprehended by officer Ahohako as he and others left the house. He was apprehended by Ahohako outside the property. I am satisfied also that Ahohako brought the accused Falevai back into the property and he was searched by Leveni. I am satisfied also beyond any reasonable doubt that during the search a small bag of methamphetamine fell to the ground having been secreted in the pants or underwear of Mr Falevai and that this was taken possession of by Leveni. I am satisfied also that it was retained in the custody of the police, taken by Falevai to the ESR analyst in Auckland and was found to be methamphetamine weighing .38 milligrams. I am satisfied that, despite his attempts to suggest he did not have possession of this illicit substance, beyond any reasonable doubt, the Crown has established that he did have it in his custody and control, and accordingly Mr Falevai is convicted of being in possession of methamphetamine on the 10<sup>th</sup> August 2018 as charged. He is convicted and remanded in custody, a probation report is ordered and he is to await sentence on a suitable date.
7. As to Mr Ta'ai, there was no dispute that he resided at the search address in Ngele'ia. Evidence was given that there were other occupants of the house, his wife and his younger brother who occupied separate bedrooms and another woman who was a friend of the accused's wife. Evidence was given and indeed it was not disputed that Mr Ta'ai's bedroom was on the front right hand corner of the house. It was in this bedroom that Leveni located a notebook which belonged to the accused. I am

satisfied from his lengthy experience in drugs, six years and about 500 cases, that this notebook constituted rather more than a work book which Leveni had reported the accused to state it was, and was a tick list or book as it is known sometimes in this illicit trade that is a list or record of customers, sales, and amounts sold or in some cases debts relating to drugs. There was mention here of green and white that Leveni said meant cannabis and methamphetamine, and I accept this evidence. I also accept his evidence that reference to G was grams used for drugs, that the price of \$50.00 appeared extensively in the notebook was a reference to the price for small packets or sachets of methamphetamine containing about .30 of the drug. I am satisfied also that other entries refer to sales. Although Mr Tu'utafaiva, for the accused in his defence, suggested that the accused was operating a car rental business from his premises and this explained the presence of a large sum of money located in a locked tin in a box also in the accused's bedroom, I am satisfied that there is nothing in the notebook which appears to reference any rental transaction. Nor were any documents located in the house which would support a rental business, or other legitimate activity of this kind. This notebook contained on the outside the word warlord and evidence was given that the accused had registered a car in this name. It was not disputed by the accused that this book belonged to him.

8. Officer Tapueluelu, another experienced officer in drug investigations gave similar evidence of little bags of methamphetamine worth about \$50 and gave evidence that an entry said to be poloka in the note book was a term used for ice, and that an entry poloka fo'ou was a reference to a new load of ice. A further diary was located by Police in the dining room. This also contained entries such as white and green leaf and I am satisfied similarly that these entries related to drug dealing.
9. Officer Leveni located two bags of methamphetamine underneath a sink in the bathroom. There was no evidence of prints on this bag. Mr Tu'utafaiva submitted that the drug could have belonged to any occupier of the house that included the accused's wife and his younger brother who was aged about 22 and a woman friend of the wife. Both had bedrooms in the house aside from the accused's room it would seem but there was no evidence given that in either of the other bedrooms incriminating evidence implicating any other person with the methamphetamine bags was located.
10. This was a residence where there was attached to a pole outside a surveillance camera which was focused on the street outside. Hence the occupants of the house were in a position to see who was approaching the residence. In the bedroom of the accused,

not only was there a notebook containing entries I am satisfied that was partly at least related to methamphetamine drug dealing, but also there was a box containing a tin found by Leveni and belonging to the accused. This tin contained \$5000 in Tongan cash and of this amount there were 13, \$100.00 notes and 71, \$50.00 notes. A search of the accused located \$690 in cash that included 10, \$50 notes and one \$100.00 note. Officer Tapueluelu considered that the presence of such a large number of \$50 and \$100.00 notes was significant and related to the fact that the small packs of methamphetamine were sold for \$50.00 and these were known as pepa 50, on the street. \$100 value packs he said held more of the drug.

11. According to Leveni, the accused had told him the money in the tin box was derived from rental cars. Leveni confirmed to Mr Tu'utafaiva that there were two car keys in the box also which Mr Tu'utafaiva submitted was consistent with the money being derived from rental cars. The only evidence, however, that suggested the money came from a legitimate source was the brief mention by the accused to Leveni when asked that the money came from car rental. As I have said, there was no documentation located or produced supporting this. There was evidence that one, possibly two of the cars present at the property had R (rental) number plates. One was driven by the accused's brother aged 22, in which a pipe, lighters and scales were located and another which had two occupants. I do not, consider, however, that this is evidence that rises a possibility that the cash was the product of legitimate activity.
12. Also I am satisfied located in the accused's bedroom was a pipe containing a white substance that Leveni stated was associated with methamphetamine use. I am satisfied that this was given to Officer 'Otuhouma by Leveni. 'Otuhouma confirmed this finding as being a pipe located on top of an internal window pane in the accused's bedroom although she did not record this as being located. She had itemized a pipe being found on top of a refrigerator in her document relating to the search but made no mention of any pipe, located in the accused's bedroom. I am, however, satisfied that Leveni did locate the used pipe in the area he said. Another pipe with gas lighters was located in the brother's car outside, and a weighing machine.
13. It was the central thrust of Mr Tu'utafaiva's submission that on this evidence I could not infer beyond reasonable doubt that the two bags of methamphetamine which I am satisfied were analysed as such by the ESR in Auckland having been taken there by Leveni and found to weigh 7.2 grams belonged to the accused, and that he was not in

possession of them. I disagree. I am satisfied for the following reasons beyond any reasonable doubt that the accused had custody and control of the two bags of methamphetamine located in the bathroom. In my view, the combination of the following factors leads to this inference beyond any reasonable doubt;

- a) The location of a surveillance camera outside the house from which it could be seen who was approaching the house;
- b) The fact that the residence was occupied by the accused at the relevant time and indeed he was the only one remaining there after the police presence was observed;
- c) The fact that located in his bedroom was a notebook that was not disputed to be his containing I find evidence of dealing in cannabis and methamphetamine. I am satisfied that entries relating to white and fifty dollar transactions are evidence of methamphetamine transactions and the use of the words poloka fo'ou confirm methamphetamine. I consider that the police officers Tapueluelu and Leveni were well qualified to give evidence about the notebook and its use at least partly as a record of methamphetamine transactions. Likewise, the diary found in the lounge which was located in a baby's cot in the lounge as were empty sachets of the kind used to contain drugs.
- d) The fact that a significant sum of money was located in the box in the accused's bedroom containing a large number of \$50 and \$100 bills which coincides with a small packet of methamphetamine retailing for \$50.00. In this regard, the accused was also found in possession after search of a significant number of \$50.00 notes. I accept Tapueluelu's observation that what was significant about the location of the money was the coincidence of the denominations of large numbers of 50 and some 100 dollar notes and the fact that a small amount of methamphetamine about.3 of a gram retails for \$50.00. This to my mind, supports Mr Aho's contention that the cash found in the tin and the cash found on the day of search on the accused's person were derived from dealing in methamphetamine, and this in turn assisted greatly to identify the accused as the owner of the bags of methamphetamine located in the bathroom.

- e) Also but of less importance was the location of the pipe in the accused's bedroom. To my mind use of a utensil to consume drugs does not greatly assist me on the issue of possession. It is the money and the notebook located in the accused's bedroom that is in my view cogent evidence of the accused's possession of the methamphetamine that was found in the bathroom.
- f) The fact that there was to my mind little or no evidential support for the submission that the money was acquired from a rental business. There were no documents located evidencing any rental agreements. The keys located could have belonged to cars that were not rentals. The fact that one, possibly two rentals, were on the property one being driven by the accused's younger brother is not to my mind supportive of the fact that the money acquired was possibly from a rental business and not from dealing in methamphetamine.
- g) The fact that the younger brother drove a black rental and in it was located some items that could be associated with methamphetamine use or even dealing suggests no more than that he was a person who used methamphetamine and possibly sold it. Nothing was located in any of the other bedrooms that would point the finger of suspicion at any of the other occupants. It is the tick list located in the accused's bedroom, the cash and the police evidence concerning the of the note book and the coincidence of its identity as a book recording methamphetamine dealing, the fact that small amounts of the drug retail for \$50.00 with the presence of large sums of \$50 notes in particular in cash found in the tin and located in the accused's bedroom and on his person that persuades me beyond any reasonable doubt that the methamphetamine located in the bathroom belonged to the accused Mr Langi Ta'ai, and he had possession of it as charged, meaning that he had custody and control of it.
- h) As background, I do not overlook either the fact that the information obtained by the police concerning drug dealing being active at the residence meant that police had to act quickly and pursued a warrantless search. This reaped obvious dividends. Shortly before or after police approached the residence and may have been sighted by those inside through the surveillance camera, a number of men left the house and Falevai was one of those arrested in possession of a single packet of methamphetamine .38 grams. The fact that the accused was located inside the house with a sizable number of \$50 dollar bills in his pockets that day

when the policed arrived and was the only person left at the residence, suggests to me that the timely action of the police interrupted drug dealing activity, and secured a significant amount of methamphetamine. I have no doubt that the dealer in possession of that methamphetamine was Mr Langi Ta'ai. He is convicted of possessing 7.2 grams of methamphetamine and is remanded in custody for sentence. A probation report is ordered.

**NUKU'ALOFA: 22 November 2019**



*C. B. Cato*  
**JUDGE**