

BETWEEN:

R E X

-Prosecution

AND:

VILIAMI SOILTEI NUSI

-Accused

VERDICT

BEFORE: JUSTICE CATO

Counsel: Mrs. H. A. Moa for the Prosecution
Mr. S. Tu'utafaiva for the Accused

Date of Verdict: 28 February 2020

1. The accused, a police officer, was charged with one count of bribery contrary to section 164(1) (a) and (b) of the Tonga Police Act. Particulars were that he;

“on or about the 14th June 2018 at Pelehake, whilst performing his duties as a member of Tonga Police, accepted a bribe in the form of \$200 cash from Sione Tupouto'a as an inducement to his conducting a criminal investigation involving Sione Tupouto'a as the complainant.”

2. The case turns on the statutory definition of bribe which is set out in section 164(1) of the Police Act. This provides;

A person commits an offence if the person:

- a. Is
 - (i) a member of Tonga Police; or
 - (ii) performing a function on behalf of Tonga Police ; *and*

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- b. accepts any money or other inducement to do or refrain from doing any act in the execution of the person's duty as a member or in the performance of the person's function on behalf of Tonga Police.
3. I am advised that this is one of the first, if not the first time, this legislation namely the offence of bribery under the Police Act 2010, has been tested in this Court. The evidence was in a very narrow compass. The complainant, Mr Tupouto'a, gave evidence that a significant amount of property had been stolen from his tax allotment in early April 2018. He was not unnaturally very concerned about this. He reported the matter to the Mu'a police and about two days later he met the accused who had been assigned the case. They talked about the matter and the complainant told the accused that if he got back any of the property he would "shout" him. It seems nothing more was said about the issue of a shout, and the accused is not reported as having said anything in response. The complainant said he told the accused this because he wanted him to focus his mind on getting the property back.
4. About a month later in June 2018, there was a further conversation between the two and the accused informed Mr Tupouto'a that some wire had been located. This was at the police station. The complainant identified the wire at his. Shortly after this, he told the accused he would shout him and the two met on the road at Pelehake where Mr Tupouto'a gave the accused \$250.00. He also said that he would give him more if more of his stolen property was recovered.
5. After this, the prosecution file revealed that a statement was taken from a suspect and a person was charged but nothing further seems to have occurred. In July, the complainant was concerned about the lack of progress and made a formal complaint to Police. During the course of reciting the complaint, the fact of the payment to the accused of the \$250.00 was revealed. He was subsequently arrested and charged with bribery. Mr Tupouto'a in evidence said that he had paid the money as a gift to the accused for locating the stolen wire.
6. Mr Tu'utafaiva did not take issue with the fact that the accused had been told by Mr Tupouto'a that he would shout him if he recovered property, and nor did he dispute the fact that in June 2018, the accused had been paid \$250.00. His submission was that there was no evidence that the accused as a member of the Tonga Police had been induced by the suggestion of a shout in exchange for the return of property to perform his duty and locate the property. The evidence, in his submission, did not reveal any more than that the payment constituted a gift to the accused for a service that had been

rendered. In short, the evidence did not establish that the accused accepted the money as an inducement to do or refrain from doing any act in the execution of his duty as a member of in the performance of his function on behalf of Tongan Police.

7. The Crown seemed to accept that the payment of the money said to be for past services did not constitute a bribe but contended that the accused in taking more steps such as taking a statement from a suspect or suggesting to the complainant a person might be arrested was acting under an inducement. I do not accept this. The money accepted by the accused was, as the complainant said, a gift for locating the wire. The fact that the accused may have done further work subsequently on the case is not evidence in my view of his acting under any inducement but consistently in the performance of his duty.
8. The Crown attempted to advance the Police Code of Conduct introduced under the Police Act which prohibits members of the police from accepting gifts other than in very limited circumstances. However, whilst accepting a gift improperly may lead to police disciplinary action, it is irrelevant for present purposes. The accused here did not, when the statement was made by the complainant that he would shout him for returning property, make any comment about this. There is nothing to suggest in the evidence that he was motivated by this offer to perform his duty. It was after the accused had located the wire and informed the complainant about it, and Mr Tupouto'a had identified it as his that he paid the accused the cash as he said as a gift for locating the wire.
9. In my view, the accused wrongly retained the money. By doing so, he laid himself open to disciplinary action for doing so under the Police code, and at least suspicion for taking a bribe to perform his duty. I do not consider, however, beyond any reasonable doubt that the evidence establishes that he accepted the money as an inducement to perform his duty. In the absence of any express statement by him or other evidence that gives rise to an inference beyond reasonable doubt that he did so, I am unable to find that he accepted the money as an inducement to perform his duty. It may give rise to suspicion that he might have been induced to do so, but in my view no more. The Bribery Act 2010 in the United Kingdom provides several circumstances where payments can be regarded as bribes. One situation arises where a person makes a gift knowing or believing that the acceptance of the advantage itself would constitute the improper performance of a relevant function or activity.

Archbold para 31-165, at page 2055 asserts that case 2 is aimed at catching those situations where a person is not offering a reward in exchange for an advantage, but where it would nevertheless be wrong, by virtue of the recipient's position to receive that reward.

10. For these reasons, the accused is acquitted of count one of the indictment. The other two counts being unrelated were severed and remitted to the Magistrates Court for determination. as the Crown requested

NUKU'ALOFA: 28 February 2020



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