

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 27/2019

BETWEEN : REX

- **Prosecution**

AND : MA'ATA POUONO

- **Accused**

BEFORE HON. JUSTICE NIU

Counsel : Mr. F. Samani for prosecution.

Mr. Sunia Fili for the accused.

Trial : 20 and 21 April 2020.

Submissions : by Mr. Fili on 5 May 2020.

by Mr. Samani on 20 May 2020.

Ruling : 2 June 2020

RULING (VERDICT)

The charges

[1] The accused is charged with 2 offences:

- (a) Count 1: Possession of a Class A illicit drug, methamphetamine on 17 May 2018 knowingly and without lawful excuse contrary to S.4 (a) of the Illicit Drugs Control Act.

(b) Count 2: Bribery of a member of the Tonga Police by offering to give money to members of the Tonga Police to return her home rather than take her to the Central Police Station to process her arrest and charge for a criminal offence on 17 May 2018 contrary to S.165 (1) of the Tonga Police Act.

[2] She pleaded not guilty and elected trial by judge alone.

Burden and standard of proof

[3] The prosecution (the Crown) has the burden of proving that the accused committed the two offences with admissible evidence and it must do that so that there is no reasonable doubt that the accused committed each offence. If it cannot do that, the accused must be acquitted. The accused does not have to give evidence or call any witness on her behalf. But if she does, her evidence and the evidence of her witnesses shall also be considered in the determination of whether or not the prosecution has discharged its burden to the said standard.

Evidence for the prosecution

[4] The Crown called 4 police witnesses, namely, Patelesio Tu'itavuki, Kalosi Tapueluelu, Tu'amelie Fifita and Emily 'Otuhouma.

[5] Patelesio Tu'itavuki said that he was a police officer working in the forensic division as photographer and that at 1357 hours on 22 June 2018, he took 8 photographs of items which police officer Fifita gave to him. He produced those 8 photographs in a book of photos which was exhibited as Exhibit 1. The photographs were then numbered from 1 to 8. He was not cross-examined.

[6] Kalosi Tapueluelu said that he was a police officer in the CIU (Criminal Investigation Unit) with the rank of constable, and that he had been such for 7 to 8 years, handling close to 300 cases since he started. He said that he was experienced in his work.

[7] He said that at about 3:30 to 4:00 pm on 15 May 2018, he received a call on his phone from an informer, a reliable informer, that the accused was selling drug, methamphetamine, and that a motor vehicle had just left her place after buying the drug from her. He said that the informer told him that the informer would try and find out where the accused kept the drug and that the informer would ring him back.

[8] He said that after a while, the informer rang him and said that the informer saw the accused go to a rubbish bag hanging in the house and got a diaper out of it and opened it and got the drug out of it and then she put the diaper

back into the rubbish bag and then she gave the drug to a person in a motor vehicle which had just left her place.

- [9] He said that he thought the information was reasonable and that it was reliable that the hiding of the drug in a diaper in a rubbish bag was a reasonable hiding place.
- [10] He said that he thought that if he was to seek a search warrant it would take time and the drug in the diaper might all be sold and gone by the time they would finally get from Nuku'alofa to Lapaha, and so he decided to act right away. So he went and saw the officer in charge, Sateki Tu'utafaiva, and they called a group and had them briefed and they left to Lapaha.
- [11] He said that when they got to the accused's home at Lapaha, Officer Sateki Tu'utafaiva informed the accused that they were there to search for drugs under their power under the Police Act. He said that the accused agreed and so they carried out the search. He said that officer Fifita searched a rubbish bag by the back door and that there were dirtied diapers in there and that there was one dirty looking diaper in it which was not dirtied but which had a plastic bag instead and that inside the plastic bag was the drug.
- [12] He said that they also got the wallet of the accused and that it had money in it.
- [13] He was shown photo no. 6 and he said that it showed a large plastic bag with the diaper in it on the right and the two meth bags in the plastic bag on the left. He was shown photo no. 8 and he said that it shows the plastic bag which is on the left in photo 6, with the 2 packs in it. He was shown photo 1 which showed the cash notes. He said that most of the notes were \$50s and he thought that the selling price of each pack was \$50.
- [14] He said that Officer Tu'utafaiva asked the accused whose were the drug packs, and that the accused said that they were may be her husband's.
- [15] He said that he did the weighing of the drug, which included the bags in which they were each sealed, and that they, together, came to 0.18 gram. He said that an empty little pack would weigh 0.25 gram.
- [16] He said that the name of the operation which they carried out on the accused was "Taipa Operaton".
- [17] In cross-examination, he agreed that it was not the 15th but 17th of May 2018 on which this search took place. Mr. Fili put to him that in his statement which he had written on 6 June 2018, he had stated that the rubbish bag was hanging inside their house, and he agreed. Mr. Fili put to him that that statement was untrue, and he said that the statement was

true. He was asked why he had not gone straight away and search the rubbish bag. He said that it was because he was instructed to search in another area of the house. Mr. Fili put to him that there was sufficient time to obtain a search warrant but he said that there was not.

- [18] Tu'amelie Fifita said that he had only been a police officer for 4 years and was in the drug division and that he was in the search party. He said that it was him and officer Tapueluelu who searched the rubbish bag and that he found one diaper which had the drugs in it. The drugs were in 2 packs. He said the 2 packs were shown to the accused and she was asked whose they were and she said that only Tomu her husband smoked and that may be they were his. He said that it was put to the accused that her husband was serving a prison sentence at that time, and she said yes. He said that the rubbish bag was full of rubbish and the diaper with the drugs was found about half-way down the bag. He confirmed that the 2 packs were the 2 packs in the plastic bag shown in photo 8.
- [19] At this point, Mr. Samani and Mr. Fili agreed that photocopies of the registers of movements of police exhibits be admitted as evidence without calling the keeper of those registers as witness. Accordingly a copy of the relevant pages of the Drug Division Exhibits internal movements Register was numbered Exhibit 3 and that of the external movements register was numbered Exhibit 4.
- [20] Exhibit 4 shows that the items found in the search were entered as no. 53/18 and it shows Officer Fifita's name and signature therein, when the items were entered on the register on 17 May 2018. It also shows the transfer of the items to Officer Pousima on 22 June 2018.
- [21] Exhibit 3 shows that the same items were entered in that register as no. 45/18 on 22 June 2018 and that it confirmed that the items were the same items that were entered in no. 53/18 of Exhibit 4. It also records the transfer of the items from Officer Fifita to Officer Pousima by their signatures thereon.
- [22] In cross-examination, he said that they were briefed before they left Nuku'alofa that they were going to search the accused's place at Lapaha. He said that they were told that when people went to the accused to buy drug, she would go and get it from a rubbish bag and that they believed that the drug was in the bag. He denied that the search they carried out was unlawful although they had no search warrant. He said that he did hear the accused say that the drug found was may be her husband's.
- [23] Emily 'Otuhouma was listed (no.6) in the list forwarded from the Magistrate's Court of the witnesses which the Crown would call in this trial in

the Supreme Court, but no statement of the evidence she would give was attached. Mr. Fili objected to having her called to give evidence for that reason. I ruled that the Crown provide such statement to Mr. Fili to discuss with the accused and advise the Court whether they would need further time. After resuming in the afternoon, Mr. Fili advised that they needed no further time and that the witness could proceed and give her evidence.

[24] She said that she was in the search party and that she saw Officer Fifita search a rubbish bag and that he found 2 ice (methamphetamine) packs and empty packs inside a diaper that was in the rubbish bag. She said that Officer Tu'utafaiva charged the accused with possession of it and asked her whose ice it was and that the accused said that it was only her husband who smoked.

[25] She said that she saw a wallet on the sofa and that she searched it and found a lot of cash in it and that she recorded that money in the diary of action which she was keeping. That diary of action was produced as Exhibit 5. Item 12 of that exhibit states that the cash was:

\$50 x 20

\$20 x 10

\$10 x 16

\$ 2 x 3

That would make a total of \$1,366.

[26] She said that she and the accused rode in the back seat of the motor vehicle and that Officer Tu'utafaiva sat in the front seat and that Officer Leveni drove the vehicle, and that whilst they were travelling to Nuku'alofa the accused spoke out to all of them "Guys, what if you go with the money and I go back home to my children". She said that Officer Tu'utafaiva replied to her "No, we will finish our work on you". She said that she understood what the accused said to mean that we could keep the money we had found in the wallet and to let her go.

[27] In cross-examination, she admitted that when she wrote down what the accused said to them in the vehicle she had stated that "Ma'ata Pouono asked the Police to release her to go home to her children and she would pay the Police", but that what the accused actually said was what she has stated in her evidence in chief and in her written statement written out that day of this trial. She said that she would agree that the accused was asking as she did.

- [28] She agreed that at the time of the search and of the arrest, there were about 5 or so young children of the accused in the place and that the youngest child was about 2 years old.
- [29] In re-examination, she said that she understood the accused to mean that she would pay them with her money that we had taken from her.

Further documents

[30] With that, the Crown closed its case, but I would add that before Officer Tu'amelie Fifita gave his evidence, Mr. Samani and Mr. Fili agreed and by consent the documents Exhibited 2 were admitted as evidence for the Crown. Those documents were 10 pages and they are as follows:

- (1) Pages 1 and 2 are statements by police officer, Karsten Leveni, that on 8 November 2018 he flew to New Zealand with Officer IP Taufa and took exhibits which were alleged to be methamphetamine in 22 different police operations in Tonga for analysis by ESR in New Zealand. He listed the names of the 22 operations and no. 10 of that list was the Operation Taipa. He said that they handed all the exhibits to one Janine Wilson at ESR in Mt. Roskill in Auckland on 9 November 2018, after they were kept overnight in a safe in the Manukau police station because of the lateness of their arrival in Auckland.
- (2) Page 3 is a record of the overnight holding of the exhibits and of the handover thereof to Janine Wilson.
- (3) Page 4 is a standard ESR form which Karsten Leveni had filled in and which also accompanied the exhibits delivered. It lists the names and description of the exhibit in 4 operations, the first of which is:

Exh No. 45/18 white crystal substances suspected to be
methamphetamine (OPERATION TAIPA)"

with the date "17/05/2018" as the date it was collected.

That form was signed by both Karsten Leveni and Janine Wilson.

- (4) Page 5 is the approval granted by Acting Deputy Commissioner of Police, Kalisi Tohifolau that the expenditure for the examination of the exhibits in the 4 operations be incurred.
- (5) Page 6 is a covering letter from Cameron Johnson, case manager, of the Auckland Drugs Laboratory of ESR (undated) to Inspector Halatoa Taufa of Tonga Police attaching his report on his analysis of the exhibits of 4 operations: Operation Taipa, Operation Fuekafa, Operation Ve'ehala and Operation Rental.

- (6) Pages 7 and 8 is the report of Cameron Johnson on those 4 operations and in respect of Operation Taipa, he states:

"45/18 A sealed plastic bag, marked "OPERATION TAIPA" enclosing a self-sealing plastic bag containing two plastic packages each containing white crystals.

The crystals from one package weighed 56 milligrams and contained methamphetamine.

The crystals from the remaining package weighed 58 milligrams and were not analysed further."

The report was dated 3 December 2018.

- (7) Pages 9 and 10 is a statement by Detective Constable James MAPP dated 9 November 2018 that he met Inspector Taufu and Karsten Leveni at the airport in Auckland and took them to the Manukau Police Station where he put the package of exhibits they brought into the safe in the exhibit room there and that he locked the safe and kept the key himself. He says that there was only one key to that safe and that he himself kept it from that time 2:00 am or so of that morning of 9 November 2018 until about 9:40 am of that same morning when he opened the safe again and took out the package of exhibits and handed it to Karsten Leveni. He then took both of them to ESR in Mt. Roskill where the package was opened and the exhibits were matched with the list of exhibits which Karsten Leveni had. He said that they then signed the chain of custody form (Page 3 of these documents).

Evidence for the defence

- [31] The accused gave evidence and she called two witnesses, Lu'isa Falakesi Finau and Tomu Pouono.
- [32] Ma'ata Pouono, 45 years old, tapa maker and children carer, living in Lapaha, said that on 17 May 2018 she was at home and at about 7pm, suddenly, the police arrived and entered her house, and that Officer Tu'utafaiva said that they were there to search for drugs and that they then searched, inside and outside of the house. She said that one officer was searching the diapers and he asked her what was found inside one diaper, and that she said that she did not know but that her husband smoked, and they continued searching until one said they finished and that they were taking her with them. She said she said to him please may be it was her husband's and that they told her that they would still take her. She said that they asked her where Tomu was and that she told them that he was in Hu'atolitoli.

- [33] She said that she asked them what was to happen to her children. She said she had 8 children. She said that they asked her if there was an older child and that she said yes, a boy but that he was not there. She said that they said it would be alright that that boy would come to the children later, and she did not say anything else.
- [34] She said that as they were travelling on the road, she spoke to the police:
- "Police officers, you keep my money and return me to my children". She said that Officer Tu'utafaiva replied, "We will still go to the police station". She said that she said that to the police because she felt for her children.
- [35] She said that she was taken to a room upstairs in the police station and questioned as to where she had got the money and that she told them that she had just sold her tapa cloth of 20 measures that day and got \$1,000 for it. She said that they told her that she had got the money from selling ice and that she said that she was not selling ice. She said that they told her that they would put her in the cell.
- [36] She said that she was put in a cell with 4 women who smoked and she asked that she be transferred to another cell because she was 8 months pregnant and that she was transferred 2 days later. She said that she was released after some 12 days in police custody.
- [37] She said that her husband, Tomu Pouono, had been in Australia and that he returned in April 2018. She said that he went to his trial in Court on 26 April 2018 and was remanded in custody since. She said that the drug which was found was her husband's because he had told her he used marijuana and that he was found in possession of marijuana and ice, but that she did not see him use it. She said that Tomu had come back with \$5,000 when he returned from Australia, and that the rest of the money that was found was left over from the money that he had brought. She said that the purchaser of her tapa cloth was Lu'isa Falakesi Finau from Veitongo. She said that the 20 \$50 notes were the money she had paid her for the tapa cloth.
- [38] She said that she was not offering to bribe the police with the money but only so that she could go back to her children.
- [39] In cross-examination, she agreed that tapa making was hard work and that it was a very hard way of making money. She said that she did not care anymore about how hard she had worked for the money from the sale of the tapa cloth because all she cared about was to get back to her children. She denied that she offered the money to the police because she had not worked for it to appreciate it like she had said.

Court questions

- [40] There was no re-examination, and I asked the accused and she said that they paid \$10 per month for rubbish collection and that their rubbish collection day was Thursday of each week, that they would have 2 or 3 bags for collection in each week and that this rubbish bag was the first bag after the collection was made.
- [41] It was agreed by both counsel that the 17th of May 2018 was a Thursday. I have also confirmed from the diary book of 2018 that it was.
- [42] I allowed both counsel to ask questions raised by my questions, and Mr. Fili asked and the accused said that the rubbish bag was hung on a nail by the door and that rubbish were put in it by the children from different areas of the house and that such rubbish could be old rubbish and new rubbish.
- [43] Lu'isa Falakesi Finau gave evidence and said that on the 17th of May or so she received a telephone call from one Heina Kiteau in Australia to go to Western Union and pick up money to buy a tapa cloth from the accused. She said she went and picked up the money and that she went and gave it to the accused, \$1,000 of it, all in \$50 notes. She said that that was around afternoon hours. She said she took the tapa after giving the money.
- [44] In cross-examination, she said that the tapa cloth was 20 measure in size.
- [45] I asked and she said that she took the tapa cloth to her mother, Suliana 'Ofa. She said that Ma'ata was married into Heina's family and had asked Heina to help her out because she was pregnant and was nearly due.
- [46] Tomu Pouono 49 years old fisherman of Lapaha gave evidence and said that he was the accused's husband. He said he was in Hu'atolitoli prison on 17 may 2018, that he had been there since the first week of May and was discharged in January 2019. He said that he used ice (methamphetamine) and marijuana when he went fishing and that when he got back he would hide the drugs and tell his wife that he had smoked marijuana. He said he hid them in unusual places in plastic bag including diapers and would put it on the table with the rubbish bags for collection by the rubbish collectors. He said that the drug that was found in this search was his.
- [47] There was no question by Mr. Samani or by myself and Mr. Fili closed the case for the accused.

Evidence of the informer

- [48] Mr. Fili has submitted that the evidence of the informer (which was related by the witness, Kalosi Tapueluelu, that the informer had told him that the accused had gone to a rubbish bag hanging in the house and got the drug

out of a diaper which was in there and then put the diaper back in the bag and then gave the drug to a person in a vehicle which had just left her place) was hearsay evidence and should not be considered as evidence in this trial.

[49] Mr. Samani disagrees with that. He submits that it is unfair to label this evidence as hearsay evidence when S.30 of the Illicit Drugs Control Act requires that the police do not reveal the name or identity of any informer. Alternatively, he submits that the evidence comes within the exceptions to the hearsay rule, namely, exception (a) of S.89 of the Evidence Act.

[50] I agree with Mr. Fili that this evidence is hearsay evidence. S.88 of the Evidence Act clearly provides that it is. It provides:

“88. Where it is sought to prove any fact by evidence of an oral or written statement made by any person not called as a witness, such evidence is hearsay evidence.”

And I do not agree that the evidence comes within the exception (a), or within any other exception in S.89 of the Evidence Act.

[51] S.89 (a) provides as follows:

“89. The Court shall not admit hearsay evidence except in the following cases:

(a) Where the statement forms part of the fact or transaction which is being investigated by the Court;
....”

The oral statement of the informer which Tapueluelu related, as I have bracketed in paragraph 48 above, does not form part of the fact, or transaction, which has been investigated in this trial at all. This trial is not concerned with the drug which is alleged by the informer that was taken by the accused from the rubbish bag and was given to a person in a vehicle which had just left, and it is not concerned with whether or not the accused had taken some drug out of the rubbish bag and had given it to a person in a vehicle which had just left, such as would be required if the accused was being tried in this case with “dealing” in drugs under S.4(b) of the Illicit Drugs Control Act. The accused is not even charged with “supplying” under S.4(a). She is only charged with “possessing” under S.4 (a).

[52] Mr. Samani submits that the oral statement may be held to be a statement made “res gestae”, that it was made contemporaneously with the matter which is being investigated in this trial. He says that the statement was made by a person who was on the premises or very close to the premises of

the accused at the time or very shortly after it happened so that it formed part of the act which the accused carried out so as to become *res gestae* or part of the act. But again that relates only to the act of giving something which was in the diaper in the rubbish bag to the person in the car which had just left. The search carried out as a result of that phone call of the informer took place some 2 hours later. The statement cannot possibly be contemporaneously made with the finding of the drug in the rubbish bag with which the accused is now charged.

- [53] No case authority was referred to by Mr. Samani and I am not aware of any which may support his submission.

Diary of action

- [54] Mr. Fili made no submission about the diary of action which was exhibited no. 5 and which was produced by the witness, Emily 'Otuhouma, who had written the entries therein to which she referred in her evidence. But Mr. Samani has submitted that the diary of action was admitted in evidence and that it was a contemporaneous record of the events that transpired and that it contained the information which the informer had related to Tapueluelu and that it implicated the accused and the location of the drug in the house and that the police found the drug in exactly where the informer had said it was. He says that that proved that the information was true.

- [55] I wish to state here that a diary of action cannot be evidence in this trial or in any trial unless it was expressly admitted by the accused via her counsel, or by herself, that its contents were true. A diary of action is no different from a police officer's note book. Its contents are not evidence and reference can only be made to it for the purpose of refreshing a witnesses' memory if the note in it was written at or soon after the event occurred. What is evidence is what the witness says in Court happened, not what is written in the notebook or the diary of action. In any event, the witness who produced and referred to the diary of action was Emily 'Otuhouma, and she only referred to item 14, which does not mention anything about what the informer had related to Tapueluelu, although she did say that it was her who had written all the entries in items 1 to 18, item 1 being part of the information which had been related by the informer to Tapueluelu.

Defence of ignorance of presence of the drug

- [56] The defence of the accused to the charge of possession of the drug methamphetamine with which she is charged is that she was not aware and she did not know that there was methamphetamine in the rubbish bag in her house. She says that it must have been her husband's because he was the only one who smoked, and he had told her that he smoked marijuana.

Her husband, Tomu Pouono, said in his evidence that he had smoked methamphetamine when he would go fishing and would hide the meth in different places at home and that he had hidden it in a diaper and had put it out with the rubbish bags to be collected by the rubbish collectors. Mr. Fili also submitted that the accused was not selling any drugs so as to get cash, such as the prosecution made out, because the money she had in her wallet was from the sale of her tapa cloth that day for \$1,000 (which was confirmed by the evidence of the witness Lu'isa Finau) and also money left over from \$5,000 which the husband had brought with him when he returned from Australia towards the end of the previous month, April.

[57] Mr. Fili submitted that the accused honestly did not know of the presence of the meth in the rubbish bag.

[58] Mr. Samani, in response to that defence and submission appears to base and I think that he based his submission in answer to Mr. Fili's submission on the acceptance of the information from the informer as evidence in this trial – namely that that information turned out to be exactly correct – that the accused kept the meth in a diaper in the rubbish bag in the house. He accordingly submits that the evidence proved that the accused knew exactly where the meth was because she had put it there.

[59] I have already held that the information given by the informer is not evidence in this trial.

[60] However, having considered all the evidence, other than that information, I am satisfied beyond reasonable doubt that the accused had put the 2 meth packs in the diaper and had put the diaper in the rubbish bag, for the following reasons:

(a) If what her husband has said in his evidence is true, and I am not saying that I believe it is true, that he had put the left over from the meth he had used in a diaper on the rubbish table together with the rubbish to be collected by the rubbish collectors, before he was taken to prison in the first week of May 2018, that meth would have already been collected and taken away in the following week at the latest because there is a rubbish collection in every week. I am not satisfied that the drug found in the rubbish bag had anything to do with the husband.

(b) These 2 packs were in a diaper in a rubbish bag which was still in the house. That rubbish bag had not been taken out and put out on the table for collection as yet, although according to the police officers, they had to dig down to about half way to find the diaper with the 2 packs. That means that the bag was already full or nearly full already,

and it means one of 2 things: either there was an extra ordinary accumulation of rubbish since the rubbish collection truck had left that day for which there was no explanation given, and which is unlikely to be the case, because there were normally, as the accused said, only 2 or 3 bags in a week, or the rubbish bag was kept back in the house deliberately for the purpose of a hiding place for the meth packs, which is what I accept happened.

- (c) If the accused was innocent as she has claimed and as counsel has submitted, she would not have asked the police to keep all the \$1366 which she had had in her wallet. That is a most unbelievable thing for her to do if she was innocent. I do not believe her at all, that she was willing to part with so much money, hard-earned money, if she is to be believed that she sold the tapa cloth to Lu'isa Finau on that very day, just so she could go home to her children. When she was told that her children would be alright, according to her, because the eldest boy would come home to the children later, she said she did not say anything else. If she was really concerned for her children, she would have protested right away there and then and would have continued to protest and not leave her children until some arrangement was satisfactorily made to her wish. But she did not protest. I am satisfied that she was not concerned about her children at all that she was willing to give up the \$1,366 just to return to her children. I am satisfied that she asked the police to have the money in order that she was released from the charge of possession of the meth found in the rubbish bag, and that she did that because she knew she was caught red-handed with the possession of the 2 meth packs. If she was innocent as she claimed, she would not have given to the police a false reason for her release, namely to return to her children.
- (d) I find it too convenient for the accused to be true, that the witness, Lu'isa Falakesi Finau, just happened to remember that it was the 17th May 2018 or so that she went and gave \$1,000 to her in \$50 notes to the accused for a tapa cloth 20 measure in size, without any record to show that date or the denomination of the money, some two years later. It may well be true that the transaction took place but I find it hard to believe that she would remember the date "the 17th" and the denomination of the money, as exactly as she has related. It would have been easy to have had the record of Western Union produced to substate the date and even the denomination of the money, perhaps, but none was produced or sought to be produced. It is for the accused to prove that by documentary evidence but she did not, and I

am not satisfied that she has proved that the \$1,000 was from the sale of the tapa cloth or that she received it from Lu'isa on that day.

Defence of making no offer of a bribe

[61] Mr. Fili submits that –

- (a) the accused was not offering and did not offer a bribe to the police officers, and
- (b) the accused's mind was out of balance when she asked the police to keep the money and return her to her children.

[62] Mr. Samani submits that the accused was well aware that she was being arrested and was being conveyed to the police station for processing the charge of possession of methamphetamine and the accused knowingly offered the money to the police officers as an inducement for them to refrain from taking her to the police station to do that.

[63] I agree with Mr. Samani. I have stated already that there was no reason at all for the accused to be concerned about her children, which was the only ground upon which Mr. Fili says the accused's mind was out of balance. No psychiatric evidence was given that the accused was under any such disability at any time or at all.

[64] As to Mr. Fili's point that the accused was not offering but was only asking, I do not agree. An offer and a request are the same thing. It is still an offer and its acceptance makes no difference when it is accepted because the request accompanies a condition which applies and become binding upon acceptance. If the police had accepted the accused's request, they would thereby accept the condition of releasing the accused, namely, the keeping of the money to themselves – which is exactly the acceptance of a bribe to release her from the charge of possession of the meth found in the diaper.

Ingredients of the offence

[65] I am satisfied, on the evidence, beyond reasonable doubt, that the accused was knowingly in possession of methamphetamine without lawful excuse. The accused did not dispute and Mr. Fili stated in his submissions that it was not disputed that illicit drug was found in the diaper in the bag at the home of the accused. I am satisfied beyond reasonable doubt that the 2 packs found in the diaper were properly kept and were forwarded to New Zealand where ESR confirmed that one of them contained methamphetamine.

Conviction

[66] Accordingly, I convict the accused of

Count 1: Possession of a Class A illicit drug, methamphetamine on 17 May 2018 knowingly and without lawful excuse, as charged.

Count 2: Bribery of a member of the Tonga Police by offering to give money to members of the Tonga Police to return her home rather than take her to the Central Police Station to process her arrest and charge for a criminal offence on 17 May 2018, as charged.



A handwritten signature in blue ink, appearing to be "Niu J", is written over the right side of the seal.

Niu J
JUDGE

NUKU'ALOFA: 2 June 2020.