

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

✓ Sean + file.
4/26/2

CR 256 of 2020

REX

-V-

PANGI PULOKA

BEFORE HON. JUSTICE NIU

Counsel : **Mr. T. 'Aho for the Crown.
Mrs. A. Tavo for defence.**

Submissions : **by Mrs. Tavo-Mailangi on
by Mr. 'Aho on**

Hearing : **17 February 2021.**

Verdict : **26 February 2021.**

VERDICT

The charges

[1] The accused is charged with 2 offences, namely, that on or about 23 March 2020, at Mataki'eua, he knowingly possessed without lawful excuse:

- (a) 4.34 grams of methamphetamine and
- (b) 2.17 grams of methamphetamine.

Drug not disputed

- [2] Both counsel informed me at the commencement of the trial that it was agreed that the substance which is alleged to have been found in the car and the substance which is alleged to have been found beside the car were both methamphetamine.

Defences

- [3] They informed me that the defence of the accused was that:
- (a) the search without warrant carried out was unlawful, and that substances alleged to have been found be excluded from the evidence as a result;
 - (b) the accused had no knowledge of the presence of the substances and he denies that they were in the car at any time. He was not in possession of them.

Crown Evidence

- [4] The Crown called and 3 witnesses gave evidence and by consent a booklet containing documents divided into and marked by 7 tabs was produced as evidence except for the documents in Tab no.5.
- [5] **Kusuta Vimahi**, aged 32 of Vaololoa, police officer for 13 years said that for the last 8 years he has been in the Tactical Response Group (TRG) which group is the armed officers of the force who give assistance and protection to drug squad officers when searches for drugs and weapons were being carried out.
- [6] He said that on 23 March 2020, Officer Leveni of the drug squad briefed a group of them and that as a result he and 2 other TRG officers, Manu and 'Aho, went out in a vehicle and searched for the accused who was said to be driving around in the Mataki'eua area in his car. He said that he knew the accused. This was about 8:00 pm that evening.
- [7] He said that they came out of a side road onto Mataki'eua Road and travelled eastward towards Taufa'ahau Road and there was a car travelling eastward in front of them as well, and that that car turned left on the last side road before Taufa'ahau Road. He said that they got

out of their vehicle and they saw the car turn around and it came back towards them. He said they stood in line across the road to block the car.

- [8] He said that when the car came to about 25 to 30 meters from them, he called out: "I am police. Stop the vehicle and turn off the engine". He said that they were in police uniform. But the car did not stop. He said he then took out of his right holster a Glock 17 pistol, and the other 2 officers were each holding an M4 rifle and they all shouted "I am police. Stop and turn off engine". But the driver did not stop and continued driving at them instead. He said that both Manu and 'Aho had to jump to the right side to avoid being hit by the car and that he himself could not jump to the left side because there was a hedge of tanetane plants right on the edge of the road on that side. He said that he then aimed and fired the pistol at the front right tyre of the car twice in quick succession and stood himself flat against the hedge as the car ran past just missing him. He said he thought the car would hit him and that he closed his eyes in fear and was surprised that the car did not hit him.
- [9] He said that the speed of the car had increased to 50 kmph when it went past him. He said that when the car got to Mataki'eua Road it did not stop and it turned right to travel west on Mataki'eua Road but a car travelling east along Mataki'eua road crashed into the front right of the offending car. And both vehicles came to a stop.
- [10] He said that all 3 of them ran there and that it was him who ran up to the offending car. Its driver's window was down and he saw the accused in the driver's seat rummaging in the area between the two front seats and he shouted to him: "Don't move. Raise your hands". But the accused continued rummaging as before. He said he pointed his gun at him together with the beam of his torch and he saw the accused throw something out the left window just as the other officer, Fiteli Manu, opened that door and whatever the accused had thrown hit Fiteli Manu and fell on the ground.
- [11] He said he called out to officer Manu that the accused had thrown out something and that Officer Manu said yes. He said that he then got the

accused out of the car and cuffed both his hands behind his back, and then telephoned Officer Leveni to come over, and that he also telephoned the Traffic section to come over as well.

- [12] He said that they waited for quite a while and that finally, officer Leveni and the other officers arrived. He said that photography officer, Tu'itavuki, took photographs of the two cars and of the accused's car, and that he saw what the accused had thrown out of the car, that it was a whitish styrofoam packet and identified it in photographs 7 and 8.
- [13] **In cross-examination**, he said that they were all in police uniform which were light grey long trousers, blue pullovers and dark coloured body armour but that the body armour had a 2½ inch wide self-reflecting band across the chest. He said that the surface of the road was unsealed and there were few potholes. He said that his 2 shots were fired only at the tyre of the car within 2 seconds and they damaged it.
- [14] He said that he aimed the shots to cause the car to stop and that that they would not hurt or cause any injury to the driver. He was shown photograph 11 which shows what looks like a bullet hole on the driver's door – about a foot from the front edge and about 6 inches from bottom edge of the door, and he said he did not know how it had got there.
- [15] He said that the accused did not brake, or indicate he would turn right at the intersection after he ran past him because he saw no brake or turning indicator light come on.
- [16] He said that after hand cuffing the accused, he sat him down beside his car. He said that they had authority to apply the handcuffs and that they were also authorised to use the guns for their protection and that the Commissioner of Police had so authorised them in writing and that the authorisation was renewed annually.
- [17] **Fiteli Manu**, 36 years of age, police officer for 15 years said that he has been in TRG for 8 years. He said that they were searching for the accused in the Mataki'eua area. He said they saw his car in a side road

and they got out of their vehicle and that he shouted to the accused that they were the police and to stop but that the accused did not stop. He said that they walked up towards his car but the accused was coming at them faster and that he and officer 'Aho jumped to the right side but that Vimahi was obstructed from jumping by the tanetane hedge on the left side. He said that he heard 2 shots fired by Vimahi.

- [18] He said that the car ran past them and got on to Mataki'eua Road and crashed onto an eastward travelling vehicle on that road. He said he and Vimahi ran up to the accused's car and that he opened the left front door as Vimahi called out that something was being thrown just as something hit him on his front and he called back OK he'd noticed it.
- [19] He said he shone his torch around inside the car to see if anyone else was there but there wasn't and so they just waited for the Drug squad to come and that when they came, he showed them the object that had been thrown out by the accused and which had hit him. It was still lying where it had fallen on the ground. He identified it in photographs 7 and 8.
- [20] **In cross-examination**, he said that they did call out to the accused to stop over 3 times when it was about 30 meters away, but he just speeded up as it came towards them and they had to jump out of the way. He said he then heard 2 shots fired.
- [21] He said that there was no pot in the car of the accused and he did not see any in it. He said that Vimahi called just as the object hit his chest and that it had come from the accused.
- [22] **In re-examination**, he said that the speed of the vehicle as it came towards him was dangerous and that was why they jumped out of the way. He said that the accused also caused the collision with the other vehicle and that that was an offence.
- [23] **In re-cross-examination**, he said he did see the collision happen and that he was about 10 meters away from it.
- [24] **I asked** and he said that he heard no braking of the other vehicle before the crash. He said he heard the two shots fired in quick succession. He said he had a torch and that he had it on when he

opened the door of the car and that he shone it on the object after it had hit him and fell down.

[24] **In further cross-examination**, he said he did not check where on the car the shots had hit, and that he knew it was Vimahi who had fired the two shots. On looking at photograph 11 he said the hole shown on the driver's door had been caused by a 9 mm bullet fired from a Glock 17 pistol and that all 3 of them there had one each of such pistol.

[25] He said he did not see any pot in the accused's car and that he did shine his torch around inside it not only to see if anyone else was there but to see if any dangerous things were there.

[26] **In further re-examination**, he said that he was only judging what would have caused the hole on the door because he did not know when it had happened.

[27] **Karsten Leveni**, police officer with 8 years in the Drug squad, said that when he arrived at the scene, the accused was already arrested. He said he told him that they were going to search him and his vehicle for drugs in pursuance of police powers under SS. 12 and 13 of the Illicit Drugs Control Act. He said that officer Vea searched the accused and found nothing on him but that he found something in his car. Photograph 4 showed the driver's door open and 2 plastic bags sticking out of a cup holder on the dashboard just by the driver's door.

[28] One plastic bag contained ear buds (ear sticks) and the other contained a white substance. The plastic bag with the white substance was taken into custody and was entered in the search list written at the time as "Police Exhibit No. 1". That substance was later weighed and found to be 4.34 grams and was analysed and was found to be methamphetamine.

[29] He said that Officer Manu showed him an object lying on the grass on the other side of the car. He referred to photographs 7 and 8 and confirmed that the white object that is shown in them lying on the grass was the object he saw and that that was taken into custody and was entered in the search list as "Police Exhibit No. 2". That object was

found to contain a white substance which was later weighed and found to be 2.17 grams and was analysed and was found to be methamphetamine.

[30] He said that he asked the accused whose each of those items were when they were found, and that the accused said that they were his "ice". He said an officer, 'Otuhouma, wrote down what the accused said in the diary of action and that the accused signed it. He referred to entries nos. 8 and 9 in the diary of action which stated:

"2415 Hrs 08 A Sgt Leveni find 1 pack containing ice (meth) put in cup holder for the driver and A Sgt Leveni asked whose it was and Pangji said it was his.

(Signed) P. Puloka."

2420 Hrs 09 A Sgt Leveni continued around with the workers and Pangji to the other side where one of the TRG said something was lying there that was thrown out by Pangji, and on picking it up it was a white plastic thing with a plastic bag with ice in it."

[31] He said that he charged the accused with possession of both items of ice found. He said that he and officer Vea then searched the car and the search list was written and he and the accused both signed it.

[32] **In cross-examination**, he said that he was the one who received the information about the accused that evening and that he received it from an informer he had known and dealt with for over a year. He said that that informer had provided information to him previously and that out of 10 instances in which he had provided information, 8 of them turned out to be correct. He said that the informer told him that the accused was travelling around with drugs in his vehicle and was selling them. He said that he was speaking with the informer by telephone and that the informer told him that the accused was using his, the accused's, own car. He said he knew that car because he had seen the accused driving it and had seen it at the accused home at Hofoa. He said that he knew the accused well. He said that that was about 8 pm and that it was dark already.

- [33] He said that he got to the scene at about 10 pm and found that the accused was lying on his stomach with his hands cuffed behind his back, just beside the driver's door of the car, with Vimahi standing beside him.
- [34] He said that the accused asked him to loosen the cuffs because they were hurting him and to have his hands cuffed in front of him and he had them done as he asked.
- [35] It was put to him that he had told the accused to admit that the cuffs were his so that the cuffs would be removed, and he said that it would be a lie if the accused would say that.
- [36] He was shown the diary of action item no. 9 which showed no signature of the accused and he said he thought that the accused had signed it too.
- [37] He admitted that in his written statement he had said that 7 large test tubes and 1 small test tubes were found and which were listed in the search list as Police Exhibit no. 3 but that he had not said any such thing in his evidence.
- [38] He said that the TRG officers had told him how they had tried to stop the accused's vehicle and that they had shot at it but that he did not go and look at it on the car. He said that no fingerprint dusting was done.
- [39] The Crown closed its case.

Defence evidence

- [40] Only the accused gave evidence. **Pangi Puloka**, 47 years of age of Hofoa, mechanic and panel beater, said that at between 10 and 11 pm the evening of that day, his wife rang him (from Mataki'eua) to come and take her to hospital. He said he ran there in his car, going along the Ocean of Light school road and through some side roads and came out onto Mataki'eua Road by Clive Edward's place and drove eastward towards Taufa'ahau Road. He said he turned left on a side road at the end of the Jones premises to go to his wife's home.

- [41] He said just before he turned left on to that side road he received a call from one `Isitolo Sakopo who asked him for his (cooking) pot and that he told him that he had it in his car, and that he told him to come and that he would meet him on Mataki'eua road. He said that he then went and turned around on the side road and drove back to the Mataki'eua road.
- [42] He said that when he got to the injunction of the side road and Mataki'eua Road, he looked and saw no vehicle from either direction and he proceeded to turn right to go west along Mataki'eua Road. He said that a shot then hit his car and then another car hit his car on his right front wheel and his car stopped there.
- [43] He said he saw 2 police men coming to him from his right. He said he heard one say: "Don't move. Its the police with guns". He said he did not know what to do and he was flustered ("Kou hahaka takai holo pe"). He said that the police opened his door and pulled him out and cuffed his hands behind his back and laid him on his stomach on the road and told him to face the car.
- [44] He said that the cuffs bit into his hands and he was in great difficulty, for may be an hour. He said that he asked that the cuffs be loosened but they were not.
- [45] He said that the other police finally came and after he was pulled to stand up he asked Officer Leveni to loosen the cuffs. He said that Leveni pointed to something white sticking out of the cup holder of the car and to say that it was his and he would be released. He said that he then said that it was his. He said that he said it was his because he was in great pain with the cuffs of his hands, and that he did not know what it was that was in the cup holder.
- [46] He said that after he said that it was his, the handcuffs were removed and his hands were then cuffed loosely in front of him and he was then taken to the van and they came to the police station. He said that he did not sign any paper at all.
- [47] **In cross-examination**, he denied that his evidence was a fabrication. He agreed that his counsel did not put to either Vimahi or Manu that

his car was shot as he was proceeding to turn onto Mataki'eua Road. He said that the officers Vimahi and Manu were lying when they said that they had called to him to stop and that he never saw the 3 officers in front of his car and that they were lying when they said he tried to run them over. He said they were lying in saying they shot his car to defend themselves.

[48] He was shown tab 5 of the documents (which document was not agreed to be admitted in evidence) and he agreed that it was his letter of complaint of the shooting of his car.

[49] He said that both Vimahi and Manu were both lying when they said that he had thrown something out of the car. He said that the police had put the drugs in the car and beside the car themselves.

[50] He was shown the search list which shows that a third item was found and taken as exhibits, namely 7 large test tubes and 1 small test tube which were stated to have been found in a small black bag which was on the front passenger seat and he said they were not his and he did not know anything about them.

[51] He was shown entry no. 8 of the diary of action, concerning the finding of the pack of ice in the cup holder, and he said that he did not sign the signature "P. Puloka" appearing below it. He also said that the ice found beside the car was not his either.

[52] **I asked** and he said he was about 2 inches away from and parallel to his car whilst he was lying on his stomach on the road and that his head was just to the rear of the rear right wheel of the car. He said he agreed that no question was put to Officer Leveni that he had not signed the signature "P. Puloka" below entry no. 8 of the diary of action.

[53] He said that his wife was at her parents' (Salesi Finau's) home which was on the side road onto which he had turned off from Mataki'eua Road. He said that she was sick and she wanted to be taken to the hospital and that he was at their home in Hofoa at the time. He agreed that the reasonable thing to do when 'Isitolo Sakopo called for his pot

was to tell him to come to Salesi Finau's place and pick up the pot from there while he, the accused, would take his wife to hospital right away.

[54] He said that he did not tell the police anything about that night and that when he was questioned by the police, he told them that he would not speak until he was in the Court. He said that he did not tell the police about his wife wanting to be taken to hospital and that he did not ask the police to arrange for her to be taken to hospital.

[55] He said that his car's front right tyre rim was broken because it had been shot by officer Vimahi.

[56] He said that he did not know whose vehicle had hit his vehicle and that he had not inquired who owned that vehicle. He said that he had fixed the damage caused to his vehicle himself and that it had costed him \$800.

[57] He said that the earbuds found in his car were his own and that all the stuff which were in his car as shown in the photographs were his.

Defence submissions

[58] As indicated at the commencement of this trial, Mrs. Tavo – Mailangi has submitted that the two defences of the accused are that –

(a) the search without warrant that was carried out was unlawful and that as result the two lots of methamphetamine found in that search were unlawfully found and they cannot be produced or be admitted in evidence, and

(b) he had no knowledge of the two lots of methamphetamine with which possession he is being charged.

Was the search unlawful?

[59] Dealing first with the search, Mrs. Tavo – Mailangi submits that S.24 (1) of the Illicit Drugs Control Act requires that there be reasonable grounds for the police officer to suspect that there was illicit drug in the vehicle of the accused. She says that the evidence of the police officer, Karsten Leveni, who alone had spoken with the informer was not sufficient to establish whether or not the information he received was reasonable. She says that there should have been another witness to

support his evidence and because there was no such other witness, no reasonable grounds were established, and accordingly, she submitted that the search was unlawful. She refers to the case of ***R v Tomasi*** [2019] TOSC 38 (CR 70 of 2019) 17 July 2019 in support of her submission.

[60] During the oral hearing of submissions in Court of this case, I pointed out to Mrs. Tavo – Mailangi that in the **case of Tomasi** she referred to, the Lord Chief Justice had rightly held that the illicit drug found in the vehicle in that case be not admitted because the police officer who had received the information from the informer did not give evidence at the trial and so the Crown was unable to prove that there were reasonable grounds for the search without warrant. Mr. 'Aho for the Crown agreed with me that was the reason for that decision.

[61] Mrs. Tavo – Mailangi agreed that that was so but she maintained that there should have been a supporting witness for the evidence of officer Leveni because of the seriousness of the charge.

[62] I am afraid that that is not what the law says or requires. Section 24 (1) of the Illicit Drugs Control Act provides for only “a police officer” that is, singular, “police officer”, not plural “police officers” and the preposition “a” and the word “officer” (singular) not “officers” (plural) confirms that. The provision provides as follows:

“24. Search and seizure without warrant in emergencies

(1) A police officer may exercise any of the powers in section 23 without a warrant, if the grounds for obtaining a warrant under that section exist and the officer suspects on reasonable grounds, that –

(a) It is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offence under this Act, and

(b) The circumstances are of such seriousness urgency as to require the immediate exercise of power without the authority of a warrant.”

[63] And in exercising the power granted under that section, that singular police officer may have the assistance of other police officers. S.25 provides for that:

"25. Assistance

In exercising any power conferred by this Act, a police officer, customs officer or authorised officer may have with him and use such assistance as the officer considers necessary."

[64] Section 24 (1) requires that the officer may exercise the power to carry out a search without warrant if the grounds for obtaining a search warrant exist. The grounds for obtaining a search warrant are provided in section 23 (1) of the Act. S.23 (1) provides:

"23. Search warrants

If a Magistrate is satisfied, by information that there are reasonable grounds to suspect that there is in or on any place –

- (a) an illicit drug, controlled chemical or controlled equipment;
- (b) any evidence relating to the commission of an offence against this Act; or
- (c) any property derived from an offence under this Act, the Magistrate may issue a warrant empowering a police officer or a customs officer at any time or at such time as the Magistrate may specify in the warrant, to enter the place, search for any illicit drug or thing and if found, seize it and search any person found at or in the place."

[65] I note however that that provision, s.24 (1) only refers to the search of a "place". Does the word "place" include a "vehicle"? The Act defines "place" as including "any land or any other premises", and "vehicle" is defined separately as "a conveyance for use on land, whether or not it is also capable of being used on or over water". It may therefore

appear that S.23 (1) may only concern search warrants to search lands and premises. However, one must be realistic and accept that vehicles are necessarily used on land. It would be absurd to think that a search warrant issued to search a town allotment did not include the power to search a motor vehicle parked on the town allotment.

[66] Besides, I consider that the use by a police officer of the powers under S.24 (1) of the Act does not deprive him of his powers under S.123 (1) of the Tonga Police Act, which provides:

123. **Search of places, vehicles, vessels and aircraft without warrant**

- (1) This section applies **if a police officer** is satisfied, on reasonable grounds, that:
- (a) a serious offence has been committed, **is being committed** or is about to be committed in any place, premises, vehicle, vessel or aircraft; and
 - (b) it would be impracticable, unreasonable or not in the interests of justice **if the officer** was required to apply for a warrant in order to conduct a search in relation to the offence."

[67] I have underlined the words "a police officer" and "the officer" because it confirms that only one officer is required to be satisfied of the reasonable grounds that the offence "is being committed" which I have also underlined which was the information received in the present case, that is, that the accused was going around in his car and was selling drugs from it. I consider that that power of Officer Leveni was independent of his power under S.24 (1) of the Illicit Drugs Control Act, and that it made lawful what he did in this case, if S.24 (1) of the Illicit Drugs Control Act did not, which I find also empowered Officer Leveni.

[68] The evidence of officer Leveni when cross-examined was that he was the one who received the information from the informer and that the

information was that the accused was travelling around in his vehicle selling drugs, and that that informer had given him information on 8 previous occasions which had all been correct. He therefore instructed that the search without warrant be conducted.

[69] I consider and I accept that there were reasonable grounds for officer Leveni to suspect that a serious offence was being committed and was still being committed and that it was impracticable, unreasonable and it was not in the interests of justice to apply for a search warrant because the drugs would have all been sold and lost by the time a search warrant was obtained.

[70] Accordingly, I am satisfied that the search without warrant carried out of the accused's vehicle was in accordance with both the provisions of S.123 of the Tonga Police Act and of S.24 (1) of the Illicit Drugs Control Act.

[71] The response of Mr. 'Aho for the Crown to Mrs. Tavo – Mailangi's submission in respect of this defence is that the search was lawful because the accused had committed two offences, namely, that he had tried to run the 3 police officers over with his car and secondly when he negligently drove on to Mataki'eua Road and caused the collision with the other vehicle. He accordingly submitted that the officers had reasonable cause to search the accused's vehicle. He also submitted that one of the two methamphetamines found was found outside of the car and not inside the car, meaning that it was not found in the search of the car.

[72] I agree with Mr 'Aho. The police have powers under the Traffic Act to stop a motor vehicle at any time provided that they are in uniform. S.36 (1) and (2) of the Traffic Act provides as follows:

"36. (1)The driver of a motor vehicle shall stop at the request or signal of any Police Officer in uniform and on demand shall give his name and address and shall produce his licence and the licence or certificate of registration applicable to the vehicle. If he is not the owner of the motor vehicle he shall give the name and address of the owner. If he fails to produce his driver's licence he shall

be guilty of an offence unless he produces such licence to the nearest Police Station of his choice within 48 hours of being so demanded.

(2)Any driver who on demand fails to stop or refuses to give such name and address commits an offence against this Act and may be arrested by any police officer without warrant.”

[73] In the present case, the 3 police officers were all in uniform, and the accused does not say that they were not police officers or that they were not in uniform. He says he never saw them. I do not believe his evidence. His headlights were on and his window was down. I have no doubt that he saw the 3 men because they were right in front of him and that he knew that they were police officers and that he should have stopped, as they had requested. Instead, he chose not to stop and he speeded up to run past them. He saw one of them stand and shoot at his right front wheel and he would have felt the shots hit it but he continued to speed up at that officer and that officer backed into the tanetane hedge and he continued to Mataki'eua Road, where he did not even stop and looked but drove right into the oncoming vehicle and crashed into it.

[74] As S.36(2) of the Traffic Act provides: “Any driver who on demand fails to stop...commits an offence against this Act and may be arrested by any officer without warrant”. Accordingly, the 3 officers lawfully had the power to arrest him and they did. And because he had just committed that offence of failing to stop, the 3 officers had the authority to search and to call for assistance to search the vehicle, in pursuance of the powers under as.123 of the Tonga Police Act as quote above.

[75] I am therefore satisfied that the search was lawful because the

(a) police officer Vimahi had reasonable grounds under S.123 that the accused was committing a serious offence and that it was imperative that he be stopped and that he and his vehicle be searched right away, and

(b) accused had just committed a serious offence of trying to run over the 3 officers with his vehicle and all of the 3 officers had reasonable grounds under S.123 to suspect that the accused had committed that serious offence and that it was imperative that he be stopped and that he and his vehicle be searched right away. They also had the authority under S.36(2) of the Traffic Act quoted above to arrest the accused without warrant.

[76] Accordingly, I do not agree with Mrs. Tavo – Mailangi that the search of the accused's vehicle was unlawful. I am satisfied that the search was lawful and that the production of the two methamphetamines found in the search was and is lawful and they are admissible evidence which have been deemed to have been properly produced in this trial.

Did the accused know of the methamphetamine?

[77] Dealing with the second defence of the accused, namely, that the accused had no knowledge of the two lots of methamphetamine with the possession of which he is being charged, Mrs. Tavo Mailangi submits that the evidence of the 3 witnesses of the Crown have failed to prove beyond reasonable doubt that the accused knew of the two methamphetamines alleged to have been found in the car and beside the car. She says that the accused has given evidence that he did not know where the two meths had come from and that he had only said to Officer Leveni that the meths were his because he was in great pain for over an hour because of the tightness of the handcuffs on his hands behind his back and that Officer Leveni had told him that if he did not admit that the drugs were his, he would not have loosened the handcuffs.

[78] I am afraid that I do not believe the evidence which the accused has given because of the following:

(a) He said that he came from Hofoa to Mataki'eua because his wife called him to come and take her to hospital because she was sick.

To me that meant that that was the reason why he was on the side road at Mataki'eua; otherwise he would not have left their home at Hofoa at all that night. He came to Mataki'eua only to

take his wife to hospital. Yet, he did not do that. He never went and took his wife to hospital at all. He instead turned around, when he nearly got to where his wife was, and went to give a pot which he said was in his car to the owner of it, 'Isitolo Sakopo, because 'Isitolo called and asked him for it.

- (b) I put to him that it was unreasonable for him to turn around and to go to give the pot to 'Isitolo when it would have been better if he had left the pot at the wife's parents' place for 'Isitolo to pick up and for him to take his wife to hospital instead, and he agreed.
- (c) If his wife was really sick and that he came from Hofoa specifically to take her to hospital, he would have been most concerned that his wife was taken to hospital and would have told the police of that and to ask that the police inform his wife of what had happened to him so that someone else would take her to hospital right away. But he did not do anything or say anything to anyone at all.
- (d) And when the police questioned him at the police station, he never told them anything about his wife wanting to be taken to hospital.
- (e) Even if he had made the wrong decision to turn around to take the pot to 'Isitolo, he could have and should have told the police that he was going to take the pot to 'Isitolo and to tell the police where the pot was in the car, or to ring 'Isitolo and tell him to come and pick up the pot. But he told the police no such thing.
- (f) It would have been easy to have had both his wife and 'Isitolo to come and give evidence to support his story but he did not call either of them as a witness.
- (g) When he was lying on the road beside his car, he would have known if anyone entered the car or had come close to the car to put something into or beside the car. I listened carefully to his evidence and he never said that any person or anyone had entered or come near the car to put anything in or beside the car. I therefore have to conclude that no one did. So that

according to all the evidence, no one other than Officer Vimahi and Officer Manu, had come near the accused's car up to the time Officer Leveni arrived and the search of the car began.

I therefore consider that the accused knew that no one other than those 2 officers, Vimahi and Manu, would have "planted" the two meths where they were found, like he has said in his evidence. Yet he did not accuse either of them or put to either of them that they were the ones who had planted the meths where they were found.

- (h) I consider it as unusual, and difficult to believe, that the accused who had just had a collision of his vehicle with another vehicle was not so shocked that he would be rummaging for something beside him instead of being dazed and shocked by the collision and to remain dazed and shocked. In this case, the accused himself said in his evidence that he did not know what to do and that he was just so flustered that he was "Kou hahaka holo pe" (I just was grabbing about or putting my hands about). And Officer Vimahi confirmed that in his evidence. I therefore accept the evidence of that officer that the accused was looking for something and that he did find what he was rummaging for and that he threw it out the other window of the car just as Officer Manu opened that door and the object hit him on his chest.
- (i) The accused's admission that the drugs were his were recorded by the officer 'Otuhouma in the diary of action and I accept that the signature of the accused on the entry no.8 was written by the accused himself and I do not accept his denial thereof in his evidence.
- (j) Although the accused denied he saw the 3 officers in front of his car, or that one of them shot his right front tyre, he stated, when I questioned him, that his tyre was damaged because Vimahi shot it. How would he have known that unless he saw him fire that shot?

I find his evidence entirely unreliable and disregard it.

[79] I therefore conclude, on the evidence, that the accused knew of both the methamphetamines in the car and that he threw one out and that it hit officer Manu and fell on the grass beside the car. I am satisfied that the accused had the knowledge and control of both meths and accordingly he had possession of them. He knowingly possessed them without lawful excuse.

Verdict

[80] Having therefore considered the evidence in this case and the laws relating to the charge, I am satisfied beyond reasonable doubt that the accused knowingly and without lawful excuse possessed one lot of methamphetamine weighing 4.34 grams and the other lot of methamphetamine weighing 2.17 grams at Matakī'eua on 23 March 2020, and I convict him as charged.



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

Niu J

J U D G E

NUKU'ALOFA: 26 February 2021.