

Sean + file.

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

CR 254 /2020

REX

-v-

**Petelo TU'IPULOTU**

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**VERDICT**

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BEFORE: THE HONOURABLE COOPER J

Counsel: ✓ Mr 'Aho for the Prosecution

Defendant in person

Date of trial: 25<sup>th</sup> March 2021

Date of submissions: 26<sup>th</sup> March 2021

Date of verdict: 26<sup>th</sup> March 2021

**The charges**

1. Count 3 Petelo TU'IPULOTU Interfered with evidence contrary to section 37(b) Illicit Drugs Control Act in that on or about 19<sup>th</sup> March 2020 interfered with the course of justice in that he placed two packets of suspected methamphetamine in his mouth and chewed on the packets which had a tendency to interfere with the course of justice.
2. The elements of the charges, which the Prosecution is required to prove beyond reasonable doubt, are:

**Count 3**

- a) On or about 19<sup>th</sup> March 2020
- b) The defendant

30 MAR 2021  
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- c) Unlawfully interfered with evidence with the intention of interfering with the course of justice
  - d) In that he placed two bags of suspected methamphetamine in his mouth and chewed them
  - e) That had the tendency to interfere with the course of justice and he intended to achieve that result.
3. The following exhibits were tended in evidence:
- I. Exhibit 1 (a) - Map of the scene drawn by officer Fifita
  - II. Exhibit 1 (b) - photograph of two self sealing 'dealer bags' page 3 of the bundle.
  - III. Exhibit 1 (c) – photograph of a torn apart self sealing 'dealer bag' page 9 of the bundle.

## **THE EVIDENCE**

### **Officer Fifita**

- 4. He started his evidence at 1029 hrs explaining that he had received information that drugs were being sold from the address in question. It came from a reliable source and he needed to act quickly to ensure they were not moved from the location.
- 5. When he entered the address he saw the defendant, one of three, standing and he arrested and hand cuffed him. The defendant was restless and on being asked if he had anything he did not reply.
- 6. The officer noticed he had snap bags in his mouth. Ordered to spit them out, he did not but the officer tried to force them out and was bitten for his pains.
- 7. Then he spat out the two bags and they were identified as those in page 3 of the bundle.

### **Cross-examination**

- 8. Mr. Tu'ipulotu asked questions of the officer and was told in reply :

- There were special circumstances that allowed him to enter without a warrant. In this case it would not be appropriate to wait until morning for a magistrate to sign a warrant.
  - That there were drugs at the scene and bags inside Mr. Tu'ipulotu's mouth demonstrates the police had been right to act as they did.
  - There was about ten minutes between receiving the information and their going to the address.
  - When the packs came out of the defendant's mouth they were empty, save for some residue dissolving in saliva.
  - The officer had no doubt it was methamphetamine, but it had not been tested.
  - The officer confirmed that the packet in photo page 9 was same as page 3 image.
9. There being no re-examination the Crown closed their case and there was no evidence called by the defendant.

## DISCUSSION

### Legality of the search

10. The prosecution rely on section 24 Illicit Drug Control Act:

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 and urgency as to require the immediate exercise of the power without the authority of a warrant.
11. They argue that the information was sufficient to found a warrant.
12. The time between the police receiving the information and acting upon it was ten minutes and demonstrates that they were concerned that the evidence would not be lost.

13. And, in all the circumstances it required them to act without a warrant.
14. On these particular facts I agree and find the search lawful.

**Were the elements of the charge made out?**

15. Mr. Tu'ipulotu drew my attention to these points :
  - The photo in exhibit 1 page 9 was different to that of page 3 and represented totally different bag.
  - That the bags he was responsible for having in his mouth were apparently sealed and unbroken. The consequence of that being there was no ability for saliva to have entered the bags and dissolved any of the supposed contents.
  - The bags he was responsible for had not been tested.
  - The bags had every appearance of being empty.
  - He had been charged with the very specific allegation of having in his mouth two packets "...with a substance suspected to be methamphetamine..."; whereas the bags were empty.

**Were the bags in question evidence?**

16. I consider this point because the defendant had them in his mouth before the police entered and the police had not actually seized them.
17. Section 37 A of the Act deals with this point. The answer is yes, because it relates to an article "...capable of being used as evidence...".
18. I therefore find that all the elements of the charge are made out, with the exception of there being bags that contained suspected methamphetamine.
19. In the absence of photographs that show the bags contained any substance; without there having been forensic testing; that the bags were confused with the different bag in exhibit 1 photograph page 9, by the officer in his evidence so that the explanation of the saliva dissolving the contents appears to have been mistaken; I can not accept, so that I

am sure beyond a reasonable doubt, that the bags contained any substance at all, let alone “a substance suspected to be methamphetamine”, as charged.

20. Therefore on the single count he faces I find Mr. Tu’ipulotu not guilty.

**NUKU’ALOFA**

**26 March 2021**

