

**POLICE**

v

**GRAY RONALD PITOMAKI TURIA**

Hearing: 5 December 2023  
Appearances: Ms J Crawford for the Crown  
Ms M Tangimama for Defendant  
Judgment: 19 December 2023 (NZT)

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**JUDGMENT OF GRICE, J**

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[1] Mr Turia is charged with one representative charge of offering to supply a class C controlled drug, namely cannabis, between 5 February 2021 and 15 December 2021 at Aitutaki, to other persons. Particulars are given of nine occasions on various dates that the offers to supply were made as follows:

- 5 February 2021 (268274146)
- 25 April 2021 (6827108)
- 7 May 2021 (2 Samuel Ioane)
- 14 May 2021 (268278240 and Samuel Ioane)
- 16 September 2021 (268272840)
- 1 October 2021 (268280376)
- 29 November 2021 (268271459)
- 10 December 2021 (268271459)
- 15 December 2021 (26870103)

[2] To find the defendant guilty on a representative charge, I must be satisfied beyond reasonable doubt that he offered to supply a Class C controlled drug, namely cannabis, to other persons on at least one occasion between 5 February 2021 and 15 December 2021 at Aitutaki.

[3] Mr Turia pleads not guilty to the charge and elects a judge alone trial. He says that while he used cannabis for his own purposes, both recreational and medicinal, he did not offer to supply cannabis. Mr Turia gave evidence.

[4] The Crown largely relies on text messages between Mr Turia and various people including unknown persons as the evidence it says proves the charge beyond reasonable doubt.

### **Legal Position**

#### *Onus and standard of proof*

[5] The starting point is the presumption of innocence. The defendant gave evidence in this case but that does not alter that fact that the Crown must prove that the defendant is guilty beyond a reasonable doubt. Each element of the charge must be proven beyond reasonable doubt by the Crown.

[6] The elements are set out in s 7(1)(b) of the Narcotics and Misuse of Drugs Act 2004. This provides, subject to certain exceptions not applicable in this case, that no person shall:

(b) apply or administer, or offer to supply, administer, any class C controlled drug to any other person, or otherwise deal in any such control drug.

[7] "Supply" is defined in the Act as "includes distribute, give, sell and offer to supply".

[8] A defence is provided in s 7(3) where a defendant proves that he took possession of the drug in order to prevent the commission of an offence with the drug and returned it to the possession of a person lawfully entitled to it or took all reasonable steps to deliver it to such a person. That defence is not raised in this case, nor is there any evidential foundation for such a defence.

[9] Therefore the Crown must prove beyond reasonable doubt that:

1. The substance in question was a class C controlled drug, in this case cannabis;
2. The defendant offered to supply the class C controlled drug to another person;  
and
3. The defendant knew, or was reckless as to whether, the substance that was to be supplied was a controlled drug.

[10] Because the provision refers to a particular class of controlled drug, the class of drug is an essential element of the offence that is required to be proven beyond reasonable doubt.<sup>1</sup>

[11] The New Zealand Supreme Court in *Cameron v R*<sup>2</sup> found that where the offence in question is not defined in terms which require actual knowledge or intention and nothing less, recklessness will usually be sufficient to satisfy mens rea requirements. That is the position in relation to this offence.

[12] If there is no evidential basis for the contention that the defendant lacked the necessary mens rea, then the Crown has no obligation to establish the state of mind of that defendant in respect of the status of the substance.<sup>3</sup> On that basis, the mental element of the offence will be assumed in the absence of evidence suggesting otherwise. The issue arises where the defendant has pointed to some evidence to raise the issue. If there is such evidence, the Crown is required to prove the mental element beyond reasonable doubt.

[13] An offer to supply/sell means "an intimation by the person charged to another that he is ready on request to supply to drugs of a kind prohibited by the statute".<sup>4</sup> The mens rea is that the person intended to make the offer of the drug.

[14] There is no onus on the Crown to prove that the offeree knew the subject matter of the offer was a prohibited drug or knew its class or status; the Crown need only establish an offer to supply a controlled drug and that the offer was intended to be genuine.<sup>5</sup>

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<sup>1</sup> *R v Fonotia* [2007] NZCA 188, [2007] 3 NZLR 338, at [24]-[26].

<sup>2</sup> *Cameron v R* [2017] NZSC 89, [2018] 1 NZLR 161, at [73].

<sup>3</sup> *Cameron v R*, at [96].

<sup>4</sup> *During* [1973] 1 NZLR 366, 373 (CA); *R v Beazley* [2008] NZCA 283, at [21].

<sup>5</sup> *F* (High Court, Timaru T 992358, 9 February 2000, Panckhurst J) para [9].

[15] Both counsel adopted the four principles enunciated by Cooke J in *Marr*. These are set out in *R v Jones*<sup>6</sup> where the Court of Appeal said:

[13] An indication of willingness to supply is sufficient. Further, an indication of willingness to facilitate supply by another is sufficient. In *R v Marr and Wilkinson* (CA 130 and CA 139/78, judgment 11 April 1979) this Court considered whether an intended intermediary, who indicated willingness to facilitate supply by another was rightly convicted of offering to supply. In that case *Marr* participated in such a way that, had supply eventuated, he would have been a party to that supply. Cooke J for the Court said:

The other grounds put forward by Mr Atkinson, apart from adopting some submissions by Mr Fitzgibbon, concerned offers to supply. Mr Atkinson contended that the summing up was defective in that respect in the evidence not enough to establish an offer to supply by Marr. Mr Larson submitted some propositions to us this morning which we substantially accept. He cited three cases in this Court: *R v During* [1973] 1 NZLR 366; *Gosney* [1977] 2 NZLR 130; and *R v Brown* [1978] 2 NZLR 174. We think that these decisions in the terms of the Misuse of Drugs Act 1975 justify four propositions.

First, in this context an offer to supply has to be understood in an ordinary meaning rather than in any technical sense. Secondly, there may be more than one offeror in what would commonly be regarded as one transaction. Thirdly, an intermediary may be a party to an offer to supply no matter whether in the analysis of civil law he would be regarded as the agent of the vendor or of the purchaser. Putting that point in another way, the intermediary may make an offer to supply to someone who in civil law may be his own principal. Fourthly, in ss 6 and 7 of the Misuse of Drugs Act "offer to supply" is used in a wide sense and is well capable of covering an offer to arrange for someone else to hand over a drug to the person to be supplied.

[14] In view of that statement of the law, we see no error in the summing-up as it relates to the offence in issue. It might have been preferable, as a counsel of perfection, if the Judge had explained in greater detail that something more than a comment about the possibility of supply elsewhere is needed before amounting to an offer, but we do not consider any risk of miscarriage of justice arose in this case from his not having done so.

...

[16] As is common in criminal offences, the intent of the person charged as the essential matter. That intent is to be assessed by what is said and done. What reasonable people will understand is a strong indicator of intention in the absence of other factors. So it is for a jury to decide whether what was said, and the prevailing circumstances, amounted to an intimation by the accused of willingness to supply a controlled drug.

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<sup>6</sup> *R v Jones* CA 412/10, 31 May 2002 (NZCA), at [13].

[18] Against the background of the previous supply of LSD tabs, only after invoking the referral from next door, it was open to the jury to link the two similar incidents in light of the relationship between Raewyn Pepene and Ms Jones and to infer that the conversation between Ms Jones and the officer took place on the understanding that Mr Jones' facilitation was necessary to secure supply. She could be regarded as having given that with the response "you can". It was for the jury to determine whether that in fact was the case.

[16] For the purposes of this case the provisions of the New Zealand Misuse of Drugs Act are not inconsistent with the provisions under s 7(1)(b).

[17] In summary in order to establish an offence to supply, the Crown must prove beyond reasonable doubt that an offer to supply the drugs in question was made, that is that Mr Turia was ready on request to supply the prohibited drugs, whether by direct supply or directing the third party to another person whom Mr Turia considers would provide that supply. The offence will be completed with the offer, so it is not relevant that the actual material offered was actually not the drug referred to. An offer to share drugs may be an offer to supply. Whether the defendant intended to supply is a question of fact in the circumstances and must be proved by the Crown beyond reasonable doubt.

### **Common Ground**

[18] The defendant does not dispute that he used cannabis for his own purposes. He candidly admitted that in a number of the texts he was referred to he used code words to refer cannabis and responded to inquiries seeking information on its availability.

[19] However he denies that he offered to supply cannabis to any other person. Mr Turia said some of the texts were sent by him when he was seeking to obtain cannabis for his own use. In some cases where he knew that people might be looking for cannabis he alerted them by text that it was available or from whom they might obtain it. He readily admits that he was directing third parties, either unknown or named, to cannabis to be supplied by other persons, although he would not handle the cannabis himself.

[20] The defendant puts the Crown to proof on all elements in relation to the charge.

[21] The issues in dispute are:

- a) Was the substance referred to in the relevant texts cannabis?
- b) Did the defendant make an offer to supply cannabis to another person or persons in circumstances where Mr Turia:
  - (i) was in text communication with "unknown" persons;
  - (ii) did not have the possession or control of the cannabis he referred to in the text messages;
  - (iii) acted as an intermediary for a third party obtaining cannabis by directing the person to a supply of cannabis but not a supply from Mr Turia directly.
- c) Did the defendant know or was he reckless as to whether the substance offered was cannabis?

### **Evidential Issues**

[22] Two of the Crown witnesses gave evidence by zoom. Sgt Greaves, from Australia, and Detective Sgt Sowter, from New Zealand. Those mode of evidence applications were granted without opposition before trial.

[23] As I have noted the defendant gave evidence in this case. The burden of proof for all elements of the charge beyond reasonable doubt remains with the Crown despite the defendant giving evidence. The defendant also made a pre-trial statement. This was consistent with the evidence he gave. Again this does not alter the obligation on the Crown to prove all elements of the offence beyond reasonable doubt.

[24] The Crown called expert evidence, from Detective Sergeant Sowter, a New Zealand expert in drug dealing methods generally and, in the vocabulary, often used. The defence made no objection to Detective Sowter's qualification as an expert. However the defendant through Ms Tangimama says his evidence was unreliable because all the texts retrieved from

Mr Turia's phone were not sent to him by the police in Rarotonga. The officer commented on the texts that had been provided to him, which were produced by the Crown.

[25] Detective Sowter confirmed he would comply with the code of conduct for expert witnesses in the New Zealand High Court Rules 2016. I am satisfied that Detective Sowter was appropriately qualified as an expert to give evidence in the area of drug dealing generally and the vocabulary employed.

[26] I now turn to the respective parties' positions.

### **The Crown case**

[27] The defendant was apprehended as a result of a police drugs operation on Aitutaki, named "Operation Tavake". A number of other persons were also charged with drug offending as a result of the operation.

[28] The evidence in support of the charge is largely set out in text messages transcribed and compiled into a 6-page booklet produced by Detective Inspector Ingaua. He had reviewed a large number of text messages to and from Mr Turia's phone in the relevant period. The records had been obtained by warrant from Vodafone before search warrants were executed on 13 January 2022 on various premises in Aitutaki. The text messages were between the defendant and a number of named persons including his employer Mr Schofield as well as with unknown persons at various phone numbers listed in the text message schedule.

[29] Mr Turia was initially charged by the police with selling cannabis but that charge was reduced to one representative charge of offering to supply, with particulars referring to nine specific occasions.

[30] Sgt Greaves of the Cook Islands Police executed a search warrant on the defendant's residence. Nothing relevant was found. Mr Turia was interviewed subsequently by the officer. He was cautioned and given his rights to consult a lawyer. Mr Turia made a statement which was signed by him and Sgt Greaves and in addition they both initialled each page.

[31] No objection was taken to the manner in which the statement was taken. The defendant was cautioned and advised of his rights. His evidence was consistent with his statement. Following the interview Mr Turia was arrested and charged.

[32] In the interview when asked about the text messages retrieved from his phone, Mr Turia admitted smoking cannabis and drinking cannabis drink as a medicine for back pain. He had not been prescribed cannabis but had found out about it from Google and on the Internet. Mr Turia mentioned that his sister rubbed cannabis oil on her child's feet to calm him down when he was not well and this appeared to work. Mr Turia said he had started using the drug for his back when he was living in Sydney. He returned to Aitutaki with his family in 2018. He had worked on Aitutaki ever since. Mr Turia said that he was supplied with cannabis by "random people". He confirmed the telephone number which had been the subject of the Vodafone warrant belonged to him.

[33] The text messages associated with Mr Turia's phone number, 86898 for the period 1 January 2022 – 20 January 2022 were reviewed. The transcribed text messages alleged to be relevant to the offending were produced in a schedule. The text messages which were relevant were a small number of the considerable number of texts which had been disclosed in this matter.

[34] Detective Sgt Sowter said he had been involved in numerous electronic surveillance operations in relation to a variety of crimes but predominantly drug-related matters. Detective Sowter said that in his experience text messages were regularly used by law enforcement agencies to assist in ascertaining and/or confirming whether a person is involved in criminal activity. Sometimes the only evidence of drug dealing relied on by the police in prosecutions were the text messages.

[35] Detective Sowter had had experience in a number of drug investigations in both New Zealand and in the Cook Islands. He was aware of the going rates for cannabis in those countries. He was also aware of the common methods of dealing in drugs. The officer noted that there were commonly used words and exchanges used in the drug dealing communications which he was able to identify from his experience in a number of operations including in the Cook Islands. Detective Sowter had been asked to review the text messages involving Mr Turia and commented on them in his evidence.



[36] Detective Sowter said in relation to the defendant's text messages he was able to identify a number of common drug coded words. For instance "cabbage" is a common code for cannabis. In cross-examination he confirmed that he had looked up the word "kapiti" on the internet and it is Rarotongan for "cabbage". Detective Inspector Ingaua, who is a speaker of Cook Islands Māori, had earlier in his evidence said that "kapiti" in Māori meant cabbage.

[37] Further examples of words used which the officer said could be drug-related in context were:

"Cone" – a common code for a cannabis cigarette.

"Spot" – a common code for a small amount of cannabis oil that is heated and the fumes inhaled by the user.

"Skunk" – a common code for cannabis and is considered stronger/or higher THC (a chemical component) strain of cannabis. The term "is on" that follows the "skunk" reference in an intercepted text message was a message to say that "skunk" cannabis is available for sale.

"Bong" is a common utensil used to smoke cannabis through.

"Score" is common code when wanting to purchase drugs.

"Oz" is code for an ounce of cannabis.

"Tinnie, foil or bullet" refers to a cannabis cigarette.

"Tinnie" refers to the tinfoil material and which cannabis is wrapped and generally gives the purchaser one cigarette.

[38] The officer emphasised that the words could not be taken to be drug code in isolation, but the relevance lay in the context and whether in the circumstances the language was used as code for drugs. This required looking at surrounding texts and the particular circumstances.

## The Defence evidence

[39] Mr Turia gave evidence in a straightforward manner. He admitted that he had possessed cannabis and used it for his own purposes for some years. Mr Turia had been back on Aitutaki and settled his wife and six children there in 2018. He had been employed since that time in various roles. Mr Turia said that he was asked from time to time by friends and acquaintances for cannabis. He also sourced cannabis and bought it for his own use from friends and acquaintances.

[40] The texts, including those referred to in the particulars, were put to him, and Mr Turia recognised and acknowledged those which he was asked about. He explained their content. Among other explanations for the various texts, he said:

- a) some indicated an offer by him to share cannabis with other persons. For instance, one text message offered to share a "cone" which he agreed meant to share a cannabis cigarette;
- b) there were texts to a number of people telling them that there was an offer by a third party (Mr Schofield) to assist him cleaning the bottom of the Mr Schofield's boat and Mr Schofield would give them a bag of cannabis "tips" as well as a bag of cabbage and some fish for helping Mr Turia. Mr Turia said that in that text "cabbage" was in fact actual cabbages Mr Schofield had grown cabbage during Covid and it was in short supply. He acknowledged that in another text messages the reference to "cabbage" and "kapiti" were references to cannabis.
- c) in another series of texts that he had told people that third parties had cannabis and he was just spreading the word as to its availability. He said he had on occasions asked around to find a source of cannabis for a friend or acquaintance who had asked him for cannabis. He had therefore acted as an intermediary but had not offered to supply cannabis to anyone himself;
- d) he did offer as was evident from one text message to take cannabis to a person who was paralysed. He said he did this because the person could not get the cannabis themselves. Mr Turia did sell this cannabis to the person.

### **The Crown Submissions**

[41] The Crown submitted that Mr Turia had admitted using cannabis in 2021 which he sourced from friends and acquaintances. He was therefore familiar with cannabis and knew what it was. A number of the words used in the texts were codes for cannabis or cannabis related dealings. Mr Turia admitted direct supply when he said he shared a "cone" with a third party and he gave a paralysed person cannabis.

[42] The Crown submitted that offer to supply a could be established by directing a person to a third-party source of cannabis. This was acting as an intermediary, and Mr Turia had admitted doing this.

[43] The Crown submitted that the elements of offer to supply had been made out in relation to the particulars.

### **The Defence Submissions**

[44] Ms Tangimama for the defendant adopted the four principles set out in *Marr* as set out above. However she said the facts in this case did not satisfy the elements of the charge offering to supply in terms of those principles. Counsel also submitted the following by way of defence:

- a) The defendant was not an entrepreneurial drug dealer as for instance was the case with the offender in *Bishop*<sup>7</sup> to which the Crown referred in the context I discuss below. Many of the offers were prompted by a third party texting Mr Turia and so he was not the initiator of the relationship.
- b) In the case of a number of texts relied upon by the, the person receiving or sending the text was referred to as "unknown". I took this submission to be that an offer to supply an unknown person could not be used as evidence that an offer had been made.

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<sup>7</sup> *R v Bishop* CR No's 440, 452/2002 (CKHC).

- c) The expert had not been provided with all the texts recovered, but only a selection, so could not provide an opinion in this case given he said that the meaning of the texts are subject to the context, so he had not been given the whole context.
- d) The investigation was flawed because Mr Turia was charged with sale by the police at a time when the texts had not been reviewed by the expert. The charge was subsequently reduced to offering to supply.
- e) Customary rights: the casual use of cannabis in the Cook Islands was a right so was justified at customary law.

### **Analysis**

[45] The four principles in *Marr* are applicable here. On the facts I consider they apply as follows:

- a) "An offer to supply" should be interpreted in an ordinary way not in a strict legal technical manner. It includes offering to give and offering to share the prohibited drug with third parties.
- b) An offer to give the drug to another person for whatever reason including that they are paralysed and unable to collect the drugs themselves, unless the offer falls within a statutory defence, is an offer to supply.
- c) An offer is made if the defendant acts as an intermediary intending to direct a third party to a person who can supply that third party with cannabis. No consideration is necessary for acting as the intermediary.
- d) The offer to supply is complete when an offer is made with the intention of supplying cannabis to the person to whom the offer is made.
- e) An offer can be made to unknown persons. The crown produced a number of Cook Islands sentencing notes with a cannabis dealing with involved unknown persons. It is not necessary that the identity of the person supplied is known.

[46] In support of her submission that the defendant was not an entrepreneurial drug dealer Ms Tangimama noted he was just helping others by putting them in touch with cannabis suppliers and therefore was not guilty of offering to supply. While this will be relevant to sentencing the fact that a defendant is not running a sizeable drug dealing operation, nor indeed selling the drug is not a defence to offering to supply it. An offer includes an offer to give the drug away or to share it. The fact that the defendant did not initiate contact is not relevant. The focus is on whether there is an offer to supply whoever was the initiator.

[47] The sentencing notes in the case of *Bishop* were referred to by the Crown in support of its submission that drug dealing charges may be made out without identifying the person to whom the drug is supplied or in this case, is offered. All that needs to be established is that the offer is made to a third party. Mr Turia in his evidence said that in relation to the text messages shown to him by the Crown, where the schedule said that the sender or the recipient was "unknown" he would have known or been acquainted with the person with whom he was communicating.

[48] I also do not consider there is anything in the submission that the Detective Sgt Sowter had not been provided with all the texts recovered so could not provide an opinion in this case. He was provided with a copy of the texts that the police in Rarotonga had identified as being relevant to drug dealing. There were a sufficient number of texts in the six pages of texts for Detective Sowter to give evidence as to possible meanings of the language. He was careful to say that the texts needed to be looked at in context. That does not mean that he needed to see every text which had been retrieved by the police involving Mr Turia for the period. Detective Sowter was able to identify vocabulary used in texts which had drug dealing connotations in the appropriate context.

[49] Mr Turia in his evidence largely confirmed that the words that Detective Sowter had identified as possibly having drug connotations were in fact referring to cannabis and related matters. For instance, the word "cone" Mr Turia confirmed meant cannabis cigarette. Similarly, he agreed that "cabbage" in some (not all) of the text messages meant cannabis.

[50] The defence based on allegations of a flawed police investigation, is in the nature of a red herring. The conduct to which the defence refers has no relevance to the case at hand.

[51] There is no difficulty in a charge being reduced in circumstances where the Crown comes to the view that the charges laid by the police are inappropriate. It is the function of Crown Law and the Solicitor-General to ensure that the charge is prima facie supported by the evidence. That is what occurred in this case and there is nothing improper in the process of amending the charge to a lesser charge. There was no suggestion that any prejudice was caused to the defence by the amendment. The amendment was done by consent. Similarly, the delay in sending the text messages for analysis by the New Zealand expert is not relevant to the case. That the police might have done it earlier has no bearing on the case at hand. There is no evidence of relevant police misconduct or incompetence.

[52] As to the defence based on customary rights, there was no evidence of a customary right to use cannabis in the Cook Islands for leisure. Even if there had been such evidence that would not be a defence to a criminal charge unless recognised as such or is otherwise relevant to the elements of the charge.<sup>8</sup> The doctrine of Parliamentary sovereignty means that the legislation passed by Parliament, such as the Crimes Act, is enforceable in its terms. A defendant is not entitled to put himself outside the law.<sup>9</sup> Ms Tangimama also referred to use of cannabis being a constitutional right. This argument was not developed in any detail. The Constitution does not permit smoking cannabis in contravention of the law. A defence based on customary rights in the circumstances of this case must fail.

### **Analysis of the texts**

[53] As I have noted Mr Turia is charged with one representative charge of offering to supply a class C controlled drug, namely cannabis, between 5 February 2021 and 15 December 2021 at Aitutaki, to other persons. Particulars are given of nine occasions on various dates that the offers to supply were made as follows. I must be satisfied beyond reasonable doubt that at least on one occasion of those listed Mr Turia offered to supply cannabis. I therefore consider each of the particulars listed in the charge. I refer to the texts by date and give the schedule reference number allocated to the relevant text in the spreadsheet schedule in the booklet produced by the Crown.

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<sup>8</sup> *Noble v Ministry of Primary Industries* [2019] NZHC 2391.

<sup>9</sup> *Ferri v Police* [2018] NZCA 181, at [8].

**a) 5 February 2021 (268274146) (texts numbered 4-7)**

[54] This is a series of four texts. They are between Mr Turia and a phone number which is labelled as "unknown". The first text is from "unknown" at 15:16 and reads "Che Brotha any chance you can get some two day or tomorrow?"

[55] The reply comes at 16:16 from Mr Turia to the unknown phone number saying "Che my bro, sorry just saw your text, I just finished work too lol. Yea bro, I'll text you when I find. How many my bro?"

[56] A response from unknown is timed 16:18 and says "#Che bro allgoods ma man I know your busy Cuz... Just the one it's for Jay... Don't go out of your way Bro just whenever your free... We just at home having a..."

[57] A further response from "unknown" timed 17:09 reads "Hey Bro sorry man we can get 2 if possible thanks..."

[58] In cross-examination Mr Turia agreed that he understood the text to him was asking whether Mr Turia could get some cannabis. Mr Turia went back saying he would text "unknown" when he found some. Mr Turia agrees that the response from an unknown indicated in the case yet the first that they wanted "one" and then subsequently they wanted two if possible. Mr Turia said he could not find any cannabis at the time but he would have told "unknown" if he had found it.

[59] The Crown says therefore Mr Turia had agreed to supply cannabis when he found it.

*Analysis:*

[60] I consider the exchange of texts pointed to in support of this particular is too vague to prove the particular beyond reasonable doubt. Mr Turia said that he had no source of supply to direct the third party to at that stage. I am not satisfied beyond reasonable doubt that he intended to supply or act as an intermediary to enable the supply of cannabis in this case.

**b) 25 April 2021 (6827108) (text numbered 35)**

[61] On 25 April 2021 there was a text at 23:58 from Mr Turia to an unknown phone number saying "Hey bro up to, come for a few cones."

[62] Mr Turia in his evidence agreed that "cones" meant cannabis and that he was offering to share it with "unknown".

[63] The Crown therefore says he was offering to supply "unknown" with cannabis "cones".

*Analysis:*

[64] I am satisfied beyond reasonable doubt that this is an offer to supply cannabis by Mr Turia. It is an offer to share cannabis which is sufficient to establish an offer to supply cannabis.

**c) 7 May 2021 (exchanges with Samuel Ioane) (texts numbered 44-48)**

[65] The first text in this series is on 7 May 2021 at 21:06 from Mr Turia to Samuel Ioane saying "Up to bro".

[66] The response comes at 21:07 from Mr Ioane saying "Fuck all bro just at home."

[67] At 21:07 Mr Turia responds "Got some spots here Alguds to come around?"

[68] At 21:09 Mr Ioane responds to Mr Turia "Yeah bro". Mr Turia then replies at 21:09 saying "Swt bro I'll be over soon".

[69] Mr Turia agreed that a "spot" was cannabis although he disagreed it was cannabis oil. He said it was a small grain of cannabis which was burnt and consumed. Mr Turia agreed he was letting Mr Ioane know that Mr Turia would share his cannabis with him.

*Analysis:*

[70] I am satisfied beyond reasonable doubt that an offer to supply cannabis to Mr Ioane was made as evidenced in this particular. In the context was an offer to share some "spots" which was cannabis, with Mr Ioane.



**d) 14 May 2021 (268278240 and Samuel Ioane) (texts numbered 63-66)**

[71] The first text in this series is at 11:57 from Mr Turia to Mr Ioane saying "Chur bro up to, keen to give me a hand to clean the bottom of the boat for a big bag of cabs, tips?" Mr Turia then sends another text to Mr Ioane at 11:57 saying "Qs just looking for some boys".

[72] Mr Ioane replies at 12:04 saying "Hey bro I'm busy at work today what time".

[73] Mr Turia replies at 12:05 "Aww sweet bro we about half n hour".

[74] Mr Turia in evidence said that the reference to "cab" was to cabbage. Mr Turia's boss or former boss, Mr Quentin Schofield (Q), wanted the bottom of his boat cleaned and Mr Turia was organising that. Mr Turia said that Mr Schofield had grown cabbages and part of the "fee" for helping clean the bottom of the boat would be a bag of those cabbages. The reference to "tips" Mr Turia said was cannabis tips.

[75] Earlier at lines 60-61 of the text schedule on the same date at 11:42 Mr Turia had sent a text to "unknown" saying "Cuz q is looking for someone give me a hand to clean the bottom of the boat for a big bag of cabbage, tips. Some fish. Keen."

[76] Unknown had replied at 12:20 saying "I can't because I got my class straight after work. Sorry or else I would be keen." This is consistent with Mr Turia's evidence that he was texting around to find someone to help him with cleaning the bottom of the boat and was saying that in return Mr Schofield would supply some cannabis tips, together with other things.

*Analysis:*

[77] This was an offer made to Mr Ioane to supply cannabis where Mr Turia was acting as an intermediary by putting the offer that Mr Schofield was supply cannabis if the job was done. I am satisfied beyond reasonable doubt that this was an offer to supply by Mr Turia acting as an intermediary. This particular is made out.

**e) 16 September 2021 (268272840) (text number 93)**

[78] This text was sent by Mr Turia to "unknown" saying "Cuz tua is still on I found some 30. Nice"

[79] Mr Turia agreed that this was advice to an unknown third party that Mr Turia had found some cannabis (tua) and it was a good price at \$30.

*Analysis:*

[80] I am satisfied beyond reasonable doubt that Mr Turia offered to supply cannabis by directing the unknown third party to a supply of cannabis at a good price. He therefore acted as an intermediary in making the offer to supply.

**f) 1 October 2021 (268280376) (texts numbered 110-112)**

[81] A phone number recorded in the booklet as "unknown", but which Mr Turia in his evidence identified as that of "Hulk Totoia" an old school friend of his, sent a text at 23:40 saying "having a few ... but got only a nugget \*Mr Hulk Totoia". The response from Mr Turia at 23:41 read "Aw yo I got some where you"

[82] The response came at 23:41 saying "I'll come down I'm at v bar \*Mr Hulk Totoia". Mr Turia agreed that "nugget" was a reference to cannabis. He said however his response was a reference to "some" beers in that instance.

*Analysis:*

[83] I accept the evidence of Mr Turia in this regard. He was willing to confirm when references were to cannabis, against his interests, and therefore I accept his evidence when he said he was suggesting he was going to bring some beers not cannabis, on this occasion.

[84] I find this particular is not proven beyond reasonable doubt.

**g) 29 November 2021 (268271459) (texts numbered 162-164 and 166)**

[85] At 12:41 an unknown number sent a text to Mr Turia saying "Cuz you able to score 2x please". At 13:19 Mr Turia responded saying "Cuz just waiting on ria to come. Aunty Metua is still there?" A response from "unknown" was sent at 13:20 saying "Allgood cuz. No she gapped it already lol."

[86] A further text on 1 December 2021 at 09:42 to a different "unknown" number from Mr Turia said "Brother I know where to get some. Sweet."

[87] Mr Turia acknowledged in his evidence in relation to the text on 1<sup>st</sup> December that the reference to "some" was a reference to cannabis and that would have been a reply to a person who had made an enquiry about cannabis earlier. The text was to tell that person that Mr Turia had found a source of cannabis. Mr Turia said he was not going to give it directly to the person, but he was just "helping him" to get it.

[88] The Crown says the text "score 2x" was from the unknown person wanting to score two bags or two foils. Mr Turia confirmed in cross-examination that he understood that to mean he would talk to someone and see if he could get some cannabis, at the request of "unknown".

*Analysis:*

[89] I am satisfied that this particular demonstrates an offer to supply cannabis. It is it is proved beyond reasonable doubt. Again Mr Turia is not supplying the third party direct but rather acting as an intermediary by providing information to the inquirer concerning the source of a supply of cannabis.

**h) 10 December 2021 (268271459) (texts numbered 177-183)**

[90] At 14:31 an "unknown" number sent a text to Mr Turia saying: "Hey kuz you free to get another 1 please?" Mr Turia responded at 14:32 saying "Yeah swt I'll be over soon." "Unknown" responded "oh yo cheers cuz see you soon". Mr Turia replied at 15:33 saying "Cuz sorry just wit these kids, uncle faggot is coming over to get your ashcay". Unknown responded at 15:37 saying "Oh i can come there because if it's easier?" Unknown followed that up at the same time with a text saying "Otherwise yo all good if uncle fagg doesn't mind lol". At 15:38 Mr Turia responded "swt as cuz he is already on the way".

[91] Mr Turia said this was the same person as he had been texting in an earlier text on 1 December 2021 at 9:42 telling that person he knew where to get some cannabis. Mr Turia said he did not get the cannabis on that date (1 December 2021) but he did later. Mr Turia said the person who is referred to as "unknown" in the series of emails on the 10 December 2021 was someone who was paralysed and when Mr Turia got cannabis he provided it to that person because he could not get it himself. Mr Turia said uncle Fagg was a cousin who knew where to get the cannabis that day.

*Analysis:*

[92] I am satisfied beyond reasonable doubt that the particular is proven. This is an offer to supply cannabis direct the paralysed person referred to as unknown.

**i) 15 December 2021 (26870103) (text 193)**

[93] At 09:46 Mr Turia sent a text to unknown saying "Chur bro morning. The skunk is on."

[94] Mr Turia in his evidence said this was a reference to some cannabis that Mr Schofield had brought over and he was letting the unknown person know it was available.

*Analysis:*

[95] I am satisfied that this particular is proved beyond reasonable doubt. Again Mr Turia is directing the third party to a supply of cannabis. He is acting as an intermediary.

**Proof of Elements**

[96] On each particular that I have found proven, Mr Turia acknowledged that the reference was to cannabis. While Mr Turia acknowledged two direct offers to supply, he was of the view that he was either giving the cannabis away or offering to share it which did not amount to supply. That is incorrect. An offer to give or share cannabis the offer amounts to supply in terms of the charge.

[97] Mr Turia was also of the view that his acting as an intermediary and merely directing people to where cannabis could be supplied was insufficient to amount to an offer. In the context of the texts produced as a whole, there was sufficient material to enable me to be satisfied that Mr Turia was offering to direct persons to a supply of cannabis and he intended the supply to occur. I am also satisfied that in each particular which has been proven, the reference was to cannabis which is a class C controlled drug. Mr Turia knew that he was making an offer of cannabis, whether of direct supply or through a third party, on each occasion.

### **Conclusion**

[98] As is apparent I am satisfied, that in relation to seven of the particulars the Crown has proved the particular beyond reasonable doubt as being occasions when Mr Turia offered to supply cannabis. Three of these occasions were where Mr Turia offered to supply cannabis directly to the person enquiring, and four are instances where he offered to supply but the offer was made as an intermediary. These are as follows:

- 5 February 2021 (268274146). No offer to supply.
- 25 April 2021 (6827108). Offer to supply directly.
- 7 May 2021 (2 Samuel Ioane). Offer to supply directly.
- 14 May 2021 (268278240 and Samuel Ioane). Offer to supply as intermediary.
- 16 September 2021 (268272840). Offer to supply as intermediary.
- 1 October 2021 (268280376). No offer to supply.
- 29 November 2021 (268271459). Offer to suppliers intermediary.
- 10 December 2021 (268271459). Offer to supply directly.
- 15 December 2021 (26870103). Offer to suppliers intermediary.

[99] Mr Turia is convicted on the charge of offering to supply a class C controlled drug, namely cannabis, between 5 February 2021 and 15 December 2021 at Aitutaki, to other persons. The particulars which are proven are set out above.



Grace J