REGINA -v- ALFRED MAETIA and NEWTON MISI

High Court of Solomon Islands
(Muria ACJ)
Criminal Case No. 42 of 1992
Hearing: 11, 12 and 13 January 1993
Judgment: 25 January 1993

F. Mwanesalua, DPP for the Crown
A. H. Nori for the Accused

MURIA ACJ: The Accused have been jointly charged with five counts of offences under the Customs and Excise Act relating to the attempted smuggling of wild birds out of Solomon Islands. The offences with which the Accused have been charged are as follows:

Count 1 **Statement of Offence**

Putting goods prohibited for export on an aircraft, contrary to section 37(1) as read with section 141 of the Customs and Excise Act.

Particulars of Offence

ALFRED MAETIA AND NEWTON MISI, between 12 June 1992 and 20 August 1992, at Afutara, Malaita Province, put on board an aircraft prohibited exports, to wit wild birds as prescribed in L.N. No. 78/92.

COUNT 2 **Statement of Offence**

Bringing goods prohibited for export to Afutara Airport, contrary to section 37(1) as read with section 141 of the Customs and Excise Act.

Particulars of Offence

ALFRED MAETIA AND NEWTON MISI, between 12 June 1992 and 20 August 1992, at Afutara, Malaita Province, brought prohibited goods for export to wit wild birds as prescribed in L.N. No. 78/92.

COUNT 3 **Statement of Offence**

Putting goods on an aircraft for export, contrary to section 136(1)(b) as read with section 140 of the Customs and Excise Act.

Particulars of Offence

ALFRED MAETIA AND NEWTON MISI, between 12 June 1992 and 20 August 1992, at Afutara, Malaita Province, put goods for export on an aircraft at a place not approved for loading.

COUNT 4 **Statement of Offence**

Putting goods on an aircraft for export, contrary to section 136(1)(c) as read with section 140 of the Customs and Excise Act.

Particulars of Offence

ALFRED MAETIA AND NEWTON MISI, between 12 June 1992 and 20 August 1992, at Afutara, Malaita Province, put goods for export on an aircraft without the authority of the proper officer.

COUNT 5 **Statement of Offence**

Knowingly concerned in fraudulent attempt at evasion of laws and restrictions of customs relating to the export of goods, contrary to section 37(1) as read with section 214(e) of the Customs and Excise Act.

Particulars of Offence

ALFRED MAETIA AND NEWTON MISI, between 12 June 1992 and 20 August 1992, in Solomon Islands, knowingly concerned in the attempted evasion of the prohibition to the export of wild birds.

I remind myself at the outset that it is for the prosecution to prove the guilt of the Accused. This the prosecution must do so beyond reasonable doubt.

The evidence for the prosecution is that Alfred Maetia who I shall call "**the First Accused**" was the Minister in the Government responsible for Transport, Works and Utilities in June 1992. On 12 June 1992, one Peter James McDougall arrived in Honiara from Australia and contacted the First Accused. In the evening of the same day Peter James McDougall and the First Accused met at the Solomon Kitano Mendana Hotel ("the Hotel"). On 13 June 1992, the First Accused went to the Hotel again to meet Peter James McDougall who together with Mario Perfili and John Bare Maetia had already been convicted by this Court for offences under the Customs and Excise Act in connection with the attempted smuggling of the wild birds concerned out of the country.

During the meeting on 13 June 1992 which took place in Peter James McDougall's room in the Hotel, the First Accused and McDougall were discussing about airstrips and that what were the normal length of airstrips. The First Accused spent the whole day of 14 June, the next day with Peter James McDougall discussing plans. This clearly is evidenced by the entries in the electronic diary which showed:

"13 JUN SAT FLEW TO SOLOMONS ARRIVED 3PM CONTACTED ALFRED MIETEA MP. WILL MEET TOMORROW AT 6.30 PM.

14 JUN SUN SPENT ALL DAY WITH ALFRED. DISCUSSED PLANS. HE IS TO GET DETAILS OF AIRSTRIP .....":

On 14 June 1992, the First Accused together with Peter James McDougall and a taxi driver went by taxi to Tetere Beach. On the way they stopped at an old underground hospital which is near the eastern end of the Lungga Bridge. A photograph of the First Accused and the taxi driver was taken while in the old underground hospital by Peter James McDougall. At Tetere Beach, the First Accused, Peter McDougall and the taxi driver visited an underground site containing tanks.

Sometime in early July 1992 the First Accused met Mario Perfili through John Bare Maetia. On that occasion John Bare Maetia used the First Accused's Government Vehicle Reg. No. G2211 to go and pick Mario from Henderson Airport. The First Accused was then introduced to Mario Perfili by John Bare Maetia.

The First Accused was by then a Minister responsible for Commerce and Primary Industries. Mario Perfili, while in Honiara, had a number of discussions with the First Accused during which Mario Perfili expressed interest in various investments in Solomon Islands including purchasing, breeding and exporting of wild birds. Mario Perfili's other investment interests were on air services in Solomon Islands, agricultural projects and tourists resorts. In the course of their discussions Mario Perfili asked the First Accused questions about airports in the country. The First Accused told Mario Perfili that there were airfields operated by Solomon Airline, Western Pacific Air Services and private companies. Like with Peter James McDougall, the First Accused was discussing generally about airstrips with Mario Perfili.

Soon after their meeting here in Honiara, Mario Perfili sent the sum of $3,600.00 to the First Accused through the Westpac Bank for the purpose of purchasing and feeding wild birds. That sum of money was later given to **"the boys"**. The amount of $600.00 was given to Allen Galasi, $600.00 to Alfred Abuito'o, $1,000.00 to Newton Misi (the Second Accused) and the rest was given to John Bare Maetia.

Most of the business contacts were made between Mario Perfili and John Bare Maetia who throughout the period concerned was staying with the First Accused at his residence at Lengakiki. Contacts from Mario Perfili from Australia to John Bare Maetia were made through the First Accused's telephone.

Newton Misi (the Second Accused) was the First Accused's driver who used to drive 'G2211', each day he would use the vehicle, in the morning and afternoon, to look for food and

to feed the wild birds which he had been keeping at Panatina. The birds belong to John Bare and Mario Perfili. Money to buy food for the wild birds came from Mario Perfili.

On a number of occasions, after dropping the First Accused in his office, the Second Accused together with Mario Perfili and John Bare Maetia would use the vehicle (G2211) to carry out activities concerning the purchasing and feeding of the wild birds.

At about 5.00 p.m. on 17 August 1991, the Second Accused and Mario Perfili picked Ellison Sale (PW4) in the 'G2211' and dropped him at Panatina to prepare the birds to be transported to Auki. At about 19.00 p.m. Mario Perfili and the Second Accused went to Panatina in the G2211, picked PW4 and the wild birds and proceeded eastward to Tetere Beach.

Upon arrival at Tetere Beach, Mario Perfili made signals out to sea to a ship which he had arranged. That ship was the 'MV Labini' which as soon as it arrived, was loaded with the birds and sailed off to Afutara at about 12 o'clock midnight. It arrived at Afutara early the next morning. PW4 went with the birds to Afutara on instruction from Mario Perfili.

Peter James McDougall flew in with the plane from Australia landing at Afutara at about 5.30 p.m. on 19 August 1992. The birds were put into small cages and loaded into the plane that night to be taken out from Solomon Islands.

The police however were alerted and consequently Mario Perfili and Peter James McDougall were arrested and the birds were confiscated.

John Bare Maetia as mentioned earlier was later arrested, charged and had already been convicted along with the two expatriates.

These two Accused have subsequently been apprehended and charged.

Those are the circumstances surrounding the case against these Accused, I shall turn to the facts which are not in dispute.

The evidence clearly shows and it is not in dispute that the First Accused and Second Accused knew Peter James McDougall and Mario Perfili very well between June and August 1992. Further, the main figures throughout who were actively involved in the wild birds dealings were Mario Perfili, John Bare Maetia and Peter James McDougall and the Second Accused. The Second Accused was the person responsible for feeding and caring for the birds at Panatina. He was also the driver for the First Accused, driving the Government Hilux Reg. No. G2211 which was allocated to the First Accused.

It is further not in dispute that the First Accused's house was the main contact point between Mario Perfili and John Bare Maetia and that on a number of occasions telephone calls were received through the First Accused's telephone for Mr Bare Maetia. It is disputed, however, that the First Accused ever received any overseas phone calls for himself. I find as a fact that Mario Perfili and/or Peter James McDougall made telephone calls to John Bare Maetia through the First Accused's telephone at the First Accused's house at Lengakiki. I further find that although the First Accused might not have known the nature of the telephone contacts between John Bare Maetia and Mario Perfili and/or Peter James McDougall, he knew

all along that John Bare Maetia had been using his official residential telephone No. 22808 particularly when Mario Perfili and/or Peter James McDougall were in Solomon Islands.

I also find it as a fact that Mario Perfili has visited the First Accused's residence on a number of occasions.

There is no dispute that on 13 June 1992 the First Accused went to the Mendana Hotel after receiving a telephone call to meet Peter James McDougall. Again on 14 June 1992 the First Accused spent almost the whole day with Peter James McDougall firstly at the Hotel, then travelled together in a taxi to the underground hospital and then to Tetere Beach battle site. The First Accused however denied knowing him as "Peter James McDougall" and stated that the person he met only introduced himself as "Peter" and that the first time the First Accused knew him as Peter James McDougall, the pilot was during the Preliminary Inquiry. Having realised that the 'Peter' who attended at the Preliminary Inquiry was the Peter James McDougall, the pilot, the First Accused wanted to clarify his previous statement given to the police on 14 September 1992. He was advised that he would best do that in Court. That the First Accused had now done in this Court. Having observed his answers to the questions put to him by the police in the record of interview, the entries in Mr McDougall's electronic diary, Mr McDougall refusal to name the First Accused when questioned by Mr Logan (PW1) on the photograph taken by Mr McDougall of the First Accused and the taxi driver in the underground hospital on 14 June 1992 and his answers and explanations now given to the Court, I do not think I can accept the First Accused's explanations and answers on this. A reasonable tribunal of fact would conclude that the First Accused knew Peter James McDougall on 13 June 1992. I would also conclude that he did.

There can be no dispute that throughout the whole period between June and August 1992, the First Accused's Government Hilux Reg. No. G2211 had been used by Mr Bare, Mr Perfili and the Second Accused to carry out their wild birds activities. The use of the vehicle was almost without restrictions. I say almost as the Second Accused would have to pick the First Accused to and from his office in the mornings and afternoons and also to pick the First Accused's children to and from school.

The First Accused denied knowing that his vehicle had been used by Mr Bare, Mr Perfili and the Second Accused to carry out their activities concerning wild birds in question. The First Accused knew Mr Perfili well having called on him on several occasions in the office and frequently visiting his residence. Twice Mr Perfili gave money to the First Accused. He said in evidence on oath that once Mr Perfili gave him some money at his house and on another occasion, he received money from Mr Perfili through the bank. He said that the money which he gave to the boys was given to him by Mario at his house. Mario Perfili also came up to the First Accused's house to give some money to the Second Accused.

The First Accused knew that the Second Accused had been buying birds and that the birds were kept at Panatina. He further stated on oath that the Second Accused and the others were still buying birds when the band was imposed.

I find it extremely difficult to accept that the First Accused would not have known that his vehicle had been used by 'the boys' to do their wild birds business. The irresistible conclusion is that he knew but he did not stop them. No other vehicle had ben used except G2211.

The First Accused denied receiving $2,000.00 from Mario Perfili as a gift as shown in Mr Perfili's expenditure list. However the First Accused agreed he received two amounts of money from Mr Perfili of $3,000 or more.

The evidence shows that the amount of $3,600.00 received by First Accused from Mario Perfili was given to 'the boys' who shared it for their use in purchasing birds. The Second Accused had also received a further $500.00 on another occasion from Mario. On the second occasion the First Accused received money from Mario Perfili, no amount was stated. The only evidence pointing to the amounts of money given to the First Accused was contained in Mario Perfili's expenditure list which shows that on 19 July 1992 the First Accused was given $3,6000.00 for 'stock' and on the previous day, 18 July 1992 he was given $2,000.00 as "gift". That part of the expenditure list shows:-

"19/7	.....	
"	.....	
"	**J. BARE FOR STOCK**	**200.00**
"	**A. GLAS FOR STOCK**	**125.00**
"	**A. MAETIA FOR STOCK**	**3,600.00**
18/7	**A. MAETIA GIFT**	**2,000.00**
19/7	**J. RICCARDI**	**2,000.00**
28/7	**J. BARE SEND FROM AUST. STOCK**	**420.00**
2/8	**NEWTON STOCK**	**250.00**
5/8	**ALAN STOCK 160 PCS**	**800.00**

Again the irresistible conclusion is that the First Accused had received $2,000.00 from Mario Perfili as a gift. His answer to Q29 in his record of interview cannot therefore be accepted. Such an untoward conduct on the part of the First Accused was a direct consequence of allowing his office to be used by inconsiderate foreigners who seek favours. Ministers are proned to such behaviour but firmness in the execution of their office is their seal.

The First Accused denied knowing any plan to ship birds out from Tetere Beach. The Second Accused also denied knowing any such plan, although he was the driver of G2211 which took the birds to Tetere Beach on the night of 17 August 1992.

I now turn to consider the law in this case.

The two Accused in this case have been charged with committing the offences, although they were not the persons who actually did the acts constituting the offences. The prosecution is relying on the provisions of sections 21 and 22 of the Penal Code thus charging the Accused as principal offenders. I set out the two sections relied on by the prosecution:

> *"21. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say -*

(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) every person who aids or abets another person in committing the offence;

(d) any person who counsels or procures any other person to commit the offence.

In the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

22. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

The prosecution's case, in particular aided and abetted Mario Perfili, Peter James McDougall and John Bare Maetia in the commission of the offences and that they did so also in the furtherance of a common purpose. The two provisions clearly require to be proved, the presence and participation by the Accused in the commission of the alleged offences.

I shall return to this aspect of the law later in this judgment.

Let me first of all deal with Mr Nori's argument challenging Count 1 as being defective and that it discloses no offence.

Mr Nori argued that what constitutes an offence when one reads section 37(1) and 141 of Customs and Excise Act is not simply putting goods on aircraft but putting on an aircraft goods for exportation. Counsel's argument therefore is that no offence is committed unless goods are put on aircraft for exportation. With respect, counsel by his contention missed an important element required by section 37(1), that is, the goods must be '***prohibited***' or '***restricted***' to be exported.

If Mr Nori's argument is accepted and assuming the '***goods***' he referred to for exportation are prohibited for export, the charge, would have to be read as '***Putting goods on an aircraft goods prohibited to be exported for exportation.***' I do not think Parliament intended to be cumbersome in the use of words in order to make known its intention when it enacted sections 37(1) and 141 of the Act, so as to make it necessary for the words "***to be exported***" and "***for exportation***" to be used in spelling out the offence. Since the sections, in particular section 37(1), are clearly intended to cover goods which are restricted or prohibited for export being put on an aircraft, the requirement of '***exportation***' has obviously been satisfied. In my

judgement, therefore, it is unnecessary for the words "***for exportation***" to be included in the charge brought under section 37(1) as read with section 141 of the Customs and Excise Act. It becomes a matter of argument in defence to pursue by the Accused if they wish to do so.

Thus Count 1 in the Information has been properly framed disclosing an offence and contains particulars sufficient to inform the Accused of the nature of the charge brought against them.

I now return to consider the law on parties to offences in so far as the Accused here have been charged as principals for allegedly aiding and abetting the commission of the offences.

The general principle of law is that a criminal offence may be the subject of aiding and abetting provided the person accused of aiding and abetting knows the facts constituting the principal offence and actively assists and encourages the principal offender. **(See Archbold 1992 Ed. Vol.2, para. 18 - 4, page 2023).** There are numerous authorities on the law on aiding and abetting. However, it is suffice to refer to the case of ***Johnson -v- Youden*** *[1950] 1 KB 544* where at pages 546 - 547, Lord Goddard CJ said:-

> *"Before a person can be convicted of aiding and abetting the commission of an offence he must at least know the essential matters which constitute that offence. He need not actually know that an offence has been committed, because he may not know that the facts constitute an offence and ignorance of the law is not a defence. If a person knows all the facts and is assisting another person to do certain things, and it turns out that the doing of those things constitutes an offence, the person who is assisting is guilty of aiding and abetting that offence, because to allow him to say, "**I knew of all those facts but I did not know that an offence was committed,**" would be allowing him to set up ignorance of the law as a defence."*

That passage by Lord Goddard CJ was cited with approval in ***Churchill -v- Walton*** *(1967) 51 Cr. App. R. 212* and in ***Maxwell -v- DPP for Northern Ireland*** *(1978) 68 Cr. App. R. 128 [1978] 1 WLR 1350.* In a more recent case of ***Mok Wei Tak -v- R*** *(1991) 92 Cr. App. R. 209,* the Privy Council also had the occasion to consider the issue on aiding and abetting the commission of an offence. That case concerned a husband and wife in Hong Kong. The husband was charged and convicted of the offence of maintaining a standard of living above that commensurate with his present official emoluments contrary to section 10(1)(a) of the Prevention of Bribery Ordinance. The wife was charged with aiding and abetting him and was also convicted. They both appealed. The Privy Council, in considering their appeals referred to a number of authorities on the law on aiding and abetting including ***Johnson -v- Youden*** (supra) and ***McCarthy*** *(1964) 48 Cr. App. R. 111* and held that the offence under section 10(1) of the Ordinance was the maintaining of a standard of living which could not be satisfactorily explained by the husband. That offence consisted not of a single act or succession of acts, but of a course of conduct by him during the period in relation to which the charge was brought. The wife must have known that the husband had maintained during the period a standard of living beyond that justified by his salary. So the wife who aided and abetted the husband in such a conduct knowing that such a standard of living was excessive, with no satisfactory explanation, was guilty of aiding and abetting the commission of that offence.

In ***McCarthy*** (supra) the appellant was charged with aiding and abetting and assisting Hemmings (the principal) to commit the offence of knowingly possessing an explosive substance, contrary to section 4 of the Explosive Substances Act, 1883. The facts of that case

were that the appellant, McCarthy, and Hemmings were seen to come out together from Hemmings' house, drove away in a van together to a place. The police followed them and noticed that when McCarthy and Hemmings came out of the wood, Hemmings was holding something wrapped in a handkerchief and McCarthy was examining it. Hemmings then put the handkerchief in his jacket-pocket and walked to the van. When they got into the van, the police came and immediately both McCarthy and Hemmings ran away. Hemmings threw away the handkerchief and it was picked up by the police and found in it a stick of gelignite, a length of fuse and a detonator. The two men were caught and when asked by the police why he came to the wood, McCarthy said: "***For a walk in the sun***". when he was asked about the gelignite and a fuse and detonator which was in Hemmings' possession before he threw it away, McCarthy refused to give any explanation about it. The two men were convicted. In dismissing McCarthy's appeal, the Court of Criminal Appeal said at page 114:-

> *"No doubt in almost all cases of this kind, the evidence will be sufficiently strong to charge both men as principals in the first degree on the basis of joint possession. But it is possible to envisage circumstances in which A may have the sole possession and control over an explosive while B, without having any share in such possession or control, is present actively encouraging A or helping him in some way to maintain his possession or control.*
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> *In the view of this court, a man may properly be convicted of aiding and abetting this if it is found: (a) that he knew that the principal offender had explosives in his possession or under his control; (b) that he knew facts giving rise to a reasonable suspicion that the principal offender did not have such explosives in his possession or under his control for a lawful object; (c) that he was present actively encouraging or in some way helping the principal offender in the commission of this offence."*

The Privy Council applied ***McCarthy's*** case in the recent case of ***Mok Wei Tak -v- R.*** referred to earlier.

On question of the degree of knowledge required to be proved in a case where a person has been charged as a party to an offence, Parker LCJ said in ***Bainbridge*** *(1959) 43 Cr. App. R. 194, 196 - 197*:-

> *"The court fully appreciates that it is not enough that it should be shown that the prisoner knew that some illegal venture was intended. To take this case, it would not be enough if the prisoner knew (although he says he only suspected) that the equipment was going to be used to dispose of stolen property. Equally this Court is quite satisfied that it is unnecessary that the particular crime which was in fact committed should be shown to his knowledge to have been intended, and by "**particular crime**" I am using the words in the same way in which Mr Simpson used them, namely, a crime on a particular date and at particular premises."*

That case is authority for the proposition that a person can be convicted of aiding and abetting the commission of an offence even though he has no knowledge of the actual crime intended.

The case of ***Bainbridge*** was applied in ***Maxwell -v- DPP for Northern Ireland*** (supra) which was a case involving the planting of a bomb in a public house. In that case the appellant Maxwell, was charged and convicted as a principal offender although the case against him was that he aided and abetted the commission of the offences contrary to section 3(a) and (b) of the Explosive Substance Act, 1883. Maxwell was a member of a terrorist organisation (Ulster Volunteer Force) who carry out attacks against Roman Catholics in Northern Ireland. The appellant was told by a member of the organisation to drive his car to

an inn where he lived and to act as a guide to a Cortina car following him, containing three or four men who were strangers in that locality. Having reached the inn the appellant drove off while one of the men in the following car placed a bomb in the inn with a burning fuse. The son of the owner of the inn managed to detach the detonator and fuse from the bomb and threw them into the road where the detonator exploded. Later the appellant learnt that the "**job**" for the organisation was an attempt to bomb the inn. In dismissing his appeal the House of Lords held that knowledge of the actual offence committed was not an essential ingredient before a person who aided or abetted in the offence, could be convicted of that offence and that it was sufficient if the person giving aid knew the type of offence to be committed or the essential matters constituting the offence. Viscount Dilhorne said at page 1356:-

> *"I do not think that any useful purpose will be served by considering whether the offences committed by the Ulster Volunteer Force can or cannot be regarded as the same type of crime. Liability of an aider and abettor should not depend on categorisation. The question to be decided appears to me to be what conduct on the part of those in the Cortina was the appellant aiding and abetting when he led them to the Crosskeys Inn. He knew that a "military" operation was to take place. With his knowledge of the U.V.F.'s activities, he must have known that it would involve the use of a bomb or shooting or the use of incendiary devices. Knowing that he led them there and so he aided and abetted whichever of these forms the attack took. It took the form of placing a bomb. To my mind the conclusion is inescapable that he was rightly convicted on count 1.*
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> *It appears to me to follow that he was also rightly convicted on count 2 for he must have known that the means of execution of that attack were in the Cortina. He aided and abetted the control of those means and as those means were a bomb, in the possession and control the bomb".*

Finally in ***R -v- John Bare Maetia***, *Cr. Case No. 32/92* this Court held that the Accused knew of the plan to smuggle birds out of the country and that he participated in the operation, thus making him guilty of the offence.

I have dwelled in this area of the law on aiding and abetting since the Accused in this case, (although not charged with aiding and abetting the commission of the offences), have been alleged to have aided and abetted the commission of the offences, and so have been charged as principals. The prosecution's case is that these two Accused aided and abetted and assisted the other Accused who had already been dealt with in the commission of the offences under the Customs and Excise Act.

The authorities cited clearly show that for a person to have aided and abetted the commission of an offence there must be established that he is present; (actual or constructive) that he knows the facts necessary to constitute the offence, and that he is actively encouraging or in some way assisting the other person in the commission of the offence. Knowledge of the actual offence committed is not essential.

Thus the prosecution in this case must establish by evidence those matters that I have just alluded to before the Accused can be convicted. The prosecution must do so in respect of each of the Accused beyond reasonable doubt.

The learned Director argued that the First Accused's guilt can be inferred from his meeting and association with Peter James McDougall, Mario Perfili, John Bare Maetia, his cousin and who was then staying with him and the Second Accused who was his driver as well as his cousin. In support of his argument the learned Director relied on the meeting between

the First Accused and McDougall on the 13th and 14th June 1992 together with the entries in the electronic diary. Further reliance was placed on the money received by the First Accused from Mr Perfili, the use of his vehicle throughout the period, particularly on the night of 17 August 1992, the visits by Mr Perfili to his office and to his house and the video filming at his house. The learned Director further relied on the use of the First Accused's telephone by John Bare Maetia and Mr Perfili for their business contact and the record of interview which took place between Mr Logan and McDougall. As such the learned Director submitted there is both direct and indirect evidence against the First Accused.

Mr Nori's argument fore the Accused, if I can paraphrase it, is simply that there is no evidence to directly link the First Accused to what took place at Afutara and that any inference against the First Accused would simply be by suspicion.

On the facts of this case it seems clear to me that while I accept the factual circumstances mentioned by the learned Director I would still need to be satisfied by evidence of the Accused's knowledge of the type of offence to be committed, and not necessarily of the actual offence committed, or that he knew of the essential matters constituting the offences, that is, the five offences he is now facing under the Customs and Excise Act. Knowledge would need to be on such essential matters as transportation between Honiara and Afutara, preparation of the birds for the purposes of transporting them to Afutara and then onto the plane and assisting in some way so that customs laws and restrictions be avoided.

I said I did not believe the First Accused when he said that he did not know that his vehicle had been used by the Second Accused, John Bare Maetia and Mario Perfili for the purpose of purchasing and caring of the wild birds. But it would be too remote an inference to draw from that and conclude that the First Accused then knew that his vehicle was being used for some unlawful common purposes in connection with those wild birds.

The fact that I disbelieve the First Accused when he said he only knew Peter James McDougall as "**Peter**" does not necessarily lead to the conclusion that the First Accused knew of McDougall's plans of smuggling the birds out from Afutara. That would be much of a speculation which a court of law should refrain from doing.

The evidence against the first accused left a number of trails of suspicion as to his conduct as a Minister of the Crown. But he has not been charged with disciplinary offences. He has been charged with five counts of offences under the Customs and Excise Act. However I find him to be unsatisfactory on the witness box and of undisciplined conduct as a Minister of the Crown, his criminal liability remains on the prosecution to establish beyond reasonable doubt.

On the evidence before the court, the prosecution has not discharge that onus. The authorities I have cited in this judgment therefore make it inevitable that I must do my duty under section 10 of the Constitution and shall presume him innocent.

I acquit the First Accused of all counts.

The case against the Second Accused is, on the evidence as found by the Court, different. In his case, a different state of affairs arises.

The Second Accused had actually been engaged by Messrs Mario Perfili and John Bare Maetia in purchasing, feeding and caring for the wild birds. He was the driver for the First Accused. He took that opportunity to use (or more correctly, misuse) the First Accused's Government vehicle in order to carry out his work of buying wild birds, buying food for the wild birds and feeding them, and to generally look after the wild birds.

The evidence clearly show that the Second Accused was under instructions from Mario Perfili and John Bare Maetia very often. He would drive them around town, to Panatina where the birds were kept and to the markets to buy food for the birds.

On Monday 17 August 1992 the Second Accused helped prepared the birds for shipment to Malaita on the night of the same day. Mario Perfili was also there and instructing him and PW 4 to prepare the birds. He was told by Mario Perfili that a ship was found to take the birds that night to Malaita.

After preparing the birds, the First Accused and Mario Perfili went in the same vehicle, G2211, to buy bread for the birds on the ship. They were riding around in the vehicle that evening. At 7.00 p.m. they returned to Panatina.

At about 10.00 p.m., having loaded the vehicle with the birds (about 120 or 130 of them) the Second Accused, Mario Perfili and PW4 set out. When they came onto the main road, they proceeded eastward until they came to Tetere Beach.

Before this Court, the Second Accused stated that he signalled to turn to town when they reached the main road and that it was Mario Perfili who insisted that they turn east in the direction toward Tetere. However, the Second Accused was interviewed on 26 September 1992 and again on 15 September 1992 and on both occasions no mention had ever been made about his first signalling to turn to town and Mario Perfili's insistence on turning eastward. I think that was a recent invention.

The evidence from the Second Accused given in Court together with his statements in his record of interview showed that he was told and knew that they were going to Tetere that night. His answers to the following Questions in his record of interview on 26 August 1992 support the conclusion that he knew about the trip to Tetere on 17 August 1992 before he drove to Tetere that night or at least on the way to Tetere Beach that night (in Pidgin-English):

"*Q37. What time nao ologeta bird go for Malaita.*

A37. Mon 17th August, 1992.

Q38. Long what ship nao ologeta bird ia go.

A38. Ship ia nao me no save but hem one fala local ship.

Q39. Who nao arrangem ship ia.

A39. Mario nao hem arangem and then hem tallem me nomore long 2 o'clock afternoon and tallem ship bae leave long evening.

Q40. Where nao you fala loadem ologeta bird ia.

A40. Long Tetere Beach.

Q41. Why nao you fala have to load long Tetere beach and no load nomore long Point Crus Wharf

A41. Me no save too but time me questionem Mario hem say Tetere nao hem quiet place, no matter me tallem hem that long Sunday me takem go ologeta bird ia long Point Cruz Wharf nomore.

Q42. You fala who nao go withim ologeta bird ia for loadim long Tetere beach.

A42. Mario, me and Elison, and Elison nao go withim ologeta bird long ship.

Q43. Time you and Mario come back long town where nao you dropem hem.

A43. Long house belong one fala white man marrit long Bellona and stap long Mbokonavera 2, opposite house belong Fera.

.....

Q45. Time you fala takem go ologeta bird ia for Tetere beach long night ia, what nao think think belong you, straight something nao you fala doim ia or nomore.

A45. Me think think wrong long Mario nao long night ia because me fala have to go far away too much olsame that's why me questionem too much Mario why me fala no load nomore long Point Cruz and must go for Tetere, and what Mario hem tellem me nomore hem say, you likem save for what.

.....

Q49. Waswe Mario and Hon. Alfred Maetia two fala patners long this fala attemp for smugglem ologeta birds ia.

A49. No.

Q50. You save tallem me two fala ologeta associates belong Mario both long Solomons and overseas.

A50. Long overseas me no save, but long Solomons John Bare, and me fala where me fala babaem bird for hem - Allan, me and Alfred Abuito'o. One fala whiteman nao hem stap long Mbokonavera"

In cross-examination he agreed that after loading the birds onto the vehicle they proceeded direct to Tetere.

PW4 stated that Mario told them to turn right and they proceeded down to Tetere. On the way at SIPL the Second Accused asked Mario their destination and Mario replied that they were going to Tetere to board a ship.

Upon reaching Tetere Beach at midnight the Second Accused and PW4 went out of the vehicle and unloaded the birds, while Mario signalled out to sea for the ship. When the ship came, the Second Accused assisted in loading the birds into the ship's dinghy and taken onto the ship. PW4 travelled with the birds to Afutara. The Second Accused and Mario returned to Honiara. The Second Accused dropped Mario at a whiteman's house at Mbokonvera. That white man was one of the associates of Mario referred to in the Second Accused's answer to Question 50 in his record of interview.

The facts of this case make it clear that the Second Accused knew that it did not look right to have the birds loaded into the vehicle that night and to travel a very long distance

away from the public to a secluded place where the birds were to shipped out in the middle of the night. He clearly suspected something improper was going to happen. As he said, "*Me think think wrong long Mario nao long night ia*", meaning that he was suspicious that Mario was up to something which was not good that night. Having realised that he should have contemplated that what Mario had instructed him to do, that is, loading the birds and driving down to Tetere Beach in the middle of the night and loading them into a get-away vessel, was something sinister. Yet he willingly participated in the initial operation of that which was later intercepted at Afutara.

The use of the vehicle that night, the timing and the route taken were all the means and ways of executing the initial steps in the attempted smuggling of the wild birds, 130 of which were stealthily water-borne that night to Afutara. There was no evidence to show that when he learnt of what was going to happened he took any steps to prevent the birds from being silently shipped out that night nor was there any evidence to show his unwillingness to participate and assist. In fact the evidence is to the contrary.

It is unnecessary that he knew of the actual offences that were eventually committed by Mario Perfili, John Bare and Peter James McDougall at Afutara. He knew of Mario Perfili's conduct, in particular that night of 17 August 1992 and he was assisting him from Panatina to Tetere Beach and back to Mbokonavera. That was clearly aiding and abetting the operation of smuggling the birds out of the country.

On the authorities I have cited above, the Court is bound to convict him.

The Second Accused is convicted on all counts.

(G.J.B. Muria)
ACTING CHIEF JUSTICE