

PUBLIC PROSECUTOR

-V-

DIANA MISIPI

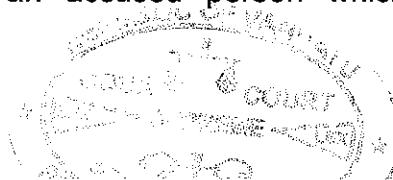
Coram: *Mr. Justice Daniel Fatiaki*

Counsel: *Mr. D. Boe for the State*
Mr. John L. Napuati the for defendant

Date of Reasons: *22 May 2015*

REASONS FOR DECISION

1. At the completion of the "voir dire" and after the court had adjourned overnight to consider the evidence, this court ruled that after carefully considering the prosecution's evidence, the court was not satisfied beyond a reasonable doubt that the admissions made by the defendant to Jackson Noal and to Risa Fred are voluntary and according they were ruled inadmissible for the reasons that follow.
2. This voir dire was held because the prosecution sought the admission of recorded admissions allegedly made by the accused to 2 police officers on 6 February 2013 namely, Senior Inspector of Police Jackson Noal who was under suspension at the time and Sergeant Risa Fred the investigating officer.
3. Both recorded admissions are challenged by the defendant as involuntary because Inspector Jackson Noal had held out an inducement to the defendant in order to extract her admissions and further, the defendant made admissions to Sgt. Risa Fred because she was still laboring under the inducement held out to her by Jackson Noal.
4. The particular inducement allegedly held out to the defendant was that if she admitted stealing money from her employer she would not be charged or locked in the cell and every effort would be made instead to settle the matter out of court by the defendant repaying in installments the monies she admitted stealing.
5. I remind myself at the outset of the common law principle for the admissibility of any inculpatory statement by an accused person which is conveniently



encapsulated in Principle (e) of the Preamble to the Judges Rules (UK) which states:

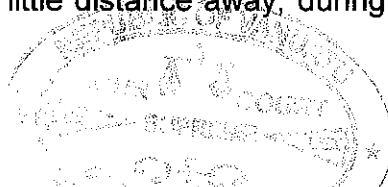
"That it is a fundamental condition of the admissibility in evidence against any person equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person that it shall have been voluntary in the sense that it has not been obtained from him by fear or prejudice, or hope of advantage, exercised or held out by a person in authority or by oppression".

6. Furthermore a "*person in authority*" is generally someone engaged in the arrest, detention, interrogation or prosecution of an accused person or who has the authority or power to influence such events as well as over the accused.
7. The prosecution accepted, that it carried the burden of establishing beyond a reasonable doubt the voluntariness of the defendant's admissions to the 2 police officers and the prosecutor called both officers who testified and were cross-examined under oath.
8. Senior Inspector Jackson Noal testified that despite being suspended at the time he became involved in the case to help a friend. He called the defendant and her husband and arranged a "*round table*" meeting with the complainant at the Vila Police Station. The meeting chaired by Sgt. Risa Fred at the CID office was attended by himself, the complainant, Ory Covo, the defendant and her husband and another civilian Jackson George. The defendant was the only female in the group with 5 other males. During the meeting he noticed the defendant was nervous, uncooperative and unresponsive, so he offered to talk with the defendant in private and they went into a separate small room at the CID section.
9. During their discussions, initially, the defendant maintained her innocence, so he told the defendant, he would return her to the police to deal with and as he was leaving the room, the defendant called him back and admitted taking her employer's money and using it to buy cargo which she sent to a family shop in Pentecost island. They then both came out of the room and returned to the round table where the defendant apologized to the complainant and offered to repay the stolen money in small amounts. The complainant was unreceptive to the defendant's offer so matters were left at that.
10. After a few days the defendant's husband called him and he arranged a meeting with the complainant at Chantilly's. when the defendant and her husband arrived they offered to repay a lump sum amount of VT160,000 and the balance in small amounts. The complainant again refused the offer and said it was left to the police to deal with the defendant. Quite unusually Jackson



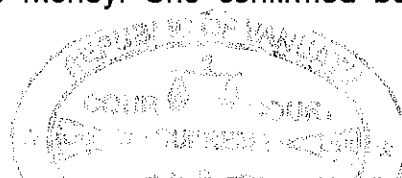
Noal's statement containing the defendant's admissions was neither marked or produced as an exhibit in the voir dire.

11. Be that as it may under cross-examination Jackson Noal admitted not cautioning the defendant before or during their private discussions in the small CID room. He frankly admitted that the complainant Ory was his "*friend*" and had asked him to help with the case and that's how he became involved. He was also related to the defendant's husband who calls him "*smol papa*".
12. He denied conducting an interview with the defendant or taking any form of contemporaneous statement from her. Neither was their discussions witnessed by a third person. The defendant's admissions to him were recorded in his own police statement 10 days later from his recollection of what the defendant had told him during their private discussions. He denied telling the defendant to admit the offence or that she would be locked in the cell and her young children would be without their mother if she didn't confess. He confirmed however that after the defendant's admissions he told her he would talk to her employer to resolve the matter out of court. He agreed that despite being under suspension, he remained Sergeant Risa Fred's superior officer.
13. To the court's questions he agreed that before the private discussions with the defendant he knew the allegations against her and he did not ask the defendant to initial her admissions later recorded in his police statement. He frankly admitted going to Pentecost island a few days after the private discussions with the defendant. His trip was fully paid for by the complainant and he stayed there for a week. His reason for going to Pentecost was to recover the cargoes that the defendant had said she bought with the stolen money. At Pentecost island he seized and packaged grocery items such as tinned food stuff, tools and even a red double cabin Toyota truck. He did not have a search warrant at the time and he left the recovered goods in Pentecost because of a court order granted against him.
14. Sgt. Risa Fred the investigating officer in the case confirmed chairing the "*round table*" meeting and seeing the defendant leaving with Jackson Noal for a private discussion as she was "*family blo hem*". After the private meeting the defendant was handed over to him at the "*round table*" room and he immediately recorded a written caution statement from the defendant in which she admitted taking the money and using it to purchase and ship cargo to the family shop in Pentecost island. The defendant had also offered to repay the stolen money.
15. The defendant's caution statement was signed in 2 places by her and was counter-signed by Risa Fred. He did not ensure that another officer was present during the recording of the defendant's caution statement albeit that also present in the room but a little distance away, during the recording of the



defendant's statement were, Jackson Noal, the defendant's husband and the complainant Ory Covo.

16. Under cross-examination Risa Fred insisted that he had cautioned the defendant before recording her statement and that she had signed the caution to acknowledge it. He was aware of a subsequent caution interview of the defendant conducted by police officer James Zedrick in which she had answered most questions: "*bae mi toktok long court*".
17. To the court's questions Risa Fred confirmed that Jackson Noal had come to the "*round table*" meeting with the complainant. He considered it appropriate for the complainant to be present at the meeting because he was there "*to help out*" (whatever that may mean). During the meeting the defendant made no admissions but, after her private discussions with Jackson Noal, she fully admitted the offence. He also confirmed that during the initial "*round table*" meeting the defendant appeared "*frightened and nervous*". He accepted that Jackson Noal was under suspension at the time but he still considered him his "*superior*".
18. He could not explain why he did not invite the defendant to write her own statement as directed in the pre-printed statement form, or why the pre-printed caution on the statement form did not bear the defendant's name in the space provided as it should have.
19. At the end of the prosecution's evidence the defendant Diana Misipi was called to testify. In chief she said that during her private discussion with Jackson Noal he had repeatedly asked her if she took the complainant's money and she denied it. Then he told her to admit taking the money and to think about her young children. Furthermore if she did not confess, the police would take her and put her in cell No. 6, after that, she admitted taking the money.
20. She felt "*worried and afraid*" when told that the police would arrest her and lock her in the cell if she did not admit the offence and she would not see her children. She respected Jackson Noal in custom and because of his position in the police force and also because he had told her that if she admitted the offence: "*evri samting i finis*". After her caution statement was recorded by Risa Fred the defendant confirms she was neither arrested or charged, but instead, she was allowed to leave the police station with her husband followed by Jackson Noal in a car. At the USP roundabout he caught up with them and advised them to find the money to repay the complainant as they had earlier discussed in their private discussions.
21. In cross-examination the defendant repeated that she had confessed because of what Jackson Noal had said to her and she denied giving him 2 "*versions*" of what had happened to the money. She confirmed being fearful during the



"round table" meeting and when told that she would be locked in the cell if she didn't admit the offence.

22. Although I was impressed by the demeanour of Jackson Noal, I was equally sure that he was a "*person in authority*" in the context of what occurred at the police station between him and the defendant who was vulnerable, nervous and fearful. Although he denies exerting any form of pressure on the defendant or offering her any inducement to confess, he frankly admitted that he had not cautioned the defendant either before or during their private discussions as he should have.
23. The fact that he admitted being a personal "*friend*" of the complainant and a close family relative of the defendant as well as being Sgt. Risa Fred's "*superior*" officer, made him uniquely able in my view, to influence the defendant and any outcome of the events at the police stations. In this latter regard despite her signed admissions in her caution statement, the defendant was neither arrested nor charged as she should have been, instead, she was released to find the money to repay the complainant, speaks volumes of the "*overpowering influence*" of Jackson Noal.
24. Needless to say Jackson Noal's state of mind during his private discussions with the defendant are irrelevant in the court's determination of the voluntariness of the defendant's admissions whatsmore whether the promise or inducement offered was gentle or slight does not matter. What matters is the defendant's state of mind in making the admission.
25. Furthermore even if I was satisfied of the voluntariness of the defendant's admissions to Jackson Noal and in her signed caution statement to Risa Fred, nevertheless, I would have exercised the court's residual discretion to exclude the defendant's admissions given the improper manner and unfair circumstances in which the admissions were made and recorded.

DATED at Port Vila, this 22nd day of May, 2015.

BY THE COURT



D. V. FATIAKI
Judge.

