

REGINA ~V~ RAY KEPANI

**High Court of Solomon Islands
(Palmer ACJ)**

Criminal Case Number 138 of 2000

**Hearing: May 7, 2002
Judgment: May 9, 2002**

*F. Mwanasalua (Director of Public Prosecutions) for the Crown
Defendant (Ray Kepani) in person*

Palmer ACJ: The Accused, Ray Kepani is charged with three offences under the Penal Code. One count of simple larceny contrary to Section 261(a), that on or about 5 November 1999 at Honiara, he stole \$113,000-00 the property of the National Census Office and two counts of forgery contrary to Section 336(2)(a) that he forged two ANZ Bank cheques, numbers 604511 and 604512 for \$68,000-00 and \$45,000-00 respectively.

Prosecution's case is fairly straightforward. They allege the accused stole the two ANZ Bank ("the Bank") cheques sometimes on the night of the 3rd November 1999, forged the signatures of Reuben Tovutovu (the Census Commissioner) and Selesa Alepio (the Accountant working in the Census Office) and cashed them on 5th November 1999.

The accused declined to give evidence under oath or to give an unsworn statement. He chose instead to remain silent. This was after court had explained to him his rights to address the court at close of Prosecution's case. He also did not call any witnesses.

The Evidence

The evidence adduced by Prosecution has been virtually unchallenged. It was not disputed that the accused worked as driver and security guard for the National Census Office ("NCO") at the time of commission of the offences.

Prosecution's evidence on the theft of the cheques and forgery has been based entirely on circumstantial evidence. Prosecution called two witnesses, the Census Commissioner ("CC") and the Accountant, Selesa Alepio ("Selesa") who described what happened on the evening of 3rd November 1999. They had worked late that night to prepare salary payments for their staff for the following day. The accused was present in the office that night. The cheques and payment vouchers were then left with the CC on his desk when Selesa left the office at about 9.00 p.m.

There is evidence which showed that when the accused returned after dropping off Selesa he remained in the office of the CC. There is evidence to show that at one point of time the CC left the office to make a cup of coffee for himself and the accused was left alone in his office. He says he was away for about ten or so minutes. The prosecution case is that it was during that time the accused must have stolen the two cheques numbered 604511 and 604512. The CC says in his evidence that he remembered the events of that night well because for the first time the accused told him to take his cheque book home when he prepared to leave the office at about 11.00 p.m. that night. He was reminded about the cheque book by the accused when he got into the vehicle and on realizing that he

had left it behind, told the accused to return to the office and get it. The CC states in his evidence that he normally leaves his cheque book in the office and that he had not had any reason for taking it home. His wife too was surprised when he took the cheque home and so kept it in a safe place when he gave it to her.

Apart from that, there has been no suggestion or evidence adduced by the accused which might suggest that the two cheques may have been stolen by someone from the house of the CC. No evidence or suggestion whatsoever has also been adduced to suggest that the cheques may have been stolen by anyone else. The accused was given opportunity to cross-examine the witnesses of the Crown but he has not sought to suggest to the CC or Selesa that the cheques may have been removed by anyone else.

I do bear in mind that the CC did not say that the accused stole the cheques that night of the 3rd November 1999. The submission that the accused may have stolen the cheques that night is by necessary implication. What Prosecution submits is that there was opportunity for the accused to remove the cheques that night when the CC went out of the room to make coffee for about ten minutes and left the accused alone in the room. The CC had no reason to suspect the accused when he was alone in his room that night. His subsequent suggestions however to the CC to take his cheque book home that night was quite unusual as it had never been suggested to him by the accused before and especially when it was repeated when he was about to settle into his seat in the vehicle. It is not known why such suggestions were made by the accused that night because he had elected to remain silent in his defence. Could it be as suggested by the learned Director of Public Prosecutions that he was trying to divert attention away from himself and hoping that it might be cast on someone else? Unfortunately, there is simply no evidence and no suggestion whatsoever before me that there was someone else to be implicated. The evidence placed him on the scene at a crucial time where there was opportunity for him to steal those two cheques.

The missing cheques were not picked up by the CC or the Accountant until the 9th November 1999 when Selesa was inputting details of the cheques into the computer. It was then that she discovered that the two cheques were missing. A check with ANZ Bank confirmed that the cheques had been cashed and the accused identified as the person who had cashed them.

Identification of the accused as the person who presented the cheques at the ANZ Bank is crucial to Prosecution's case. Two witnesses gave crucial evidence of identification. The key witness was Agnes Ludawane ("Agnes"). She was the Teller Clerk in Teller No. 1 who attended the accused on 5th November 1999 when he presented the two cheques. She confirmed the identity of the accused as a person familiar to her as he had previously attended the bank on other occasions to present cheques from the NCO. She recognized the accused as a worker from the NCO. Further, she recognized the accused as the same person that had gone to the bank on the previous day with cheques from the NCO to cash. She identified him as the same that had accompanied another officer, a woman from the NCO. That other woman happened to be Selesa, who confirmed that she had gone to the Bank with the accused on the previous day (4th November 1999).

Another Bank Officer, Carolyn Seu, has also confirmed the identity of the accused. Although she could not say with confidence that this accused in court was the same person that presented the cheques at the Bank on 5th November 1999, that was more as a result of the lapse of time since the incident. She did point out though that the person who came to the Bank looked like the accused, fat and bald. She also remembered that that person worked at the NCO and that he was the same person that had presented cheques from the NCO on the previous day (4th November 1999). She served him on 4th November 1999.

Both witnesses also confirmed that the accused presented the cheques between 9.00 a.m. and 10.00 a.m. Agnes also pointed out that the accused had a bag with him, which he used to put the money in.

Interestingly, the CC was able to confirm to a certain extent the chain of events that morning as he was looking for the accused that morning to go to Transpacific Supplies to buy a coffin for a worker of the NCO who had passed away on the previous night. He could not find the accused until about 10.30 a.m. when he saw him coming from the direction of Tong's Refueling Station and Freeway Club carrying a blue striped bag. The CC stated in evidence that he could remember clearly the bag that the accused was carrying that time because he thought the accused had brought his clothes with him in the bag to accompany him to Tulagi to attend the funeral of the Census Officer that had died. Initially the accused had told him that he was going to accompany him to Tulagi so he was under that impression at that time. The accused however later changed his mind.

The CC also pointed out that when they arrived at Transpacific Supplies to look for a coffin, the accused did not go out as usual, so he had to go out alone, leaving the accused in the vehicle. He observed that the accused left the bag he was carrying at the back of the vehicle they were using.

Conclusion

I am satisfied on the evidence before me that the issue of identity of the person who cashed the two cheques numbered 604511 and 604512 on the morning of 5th November 1999 as the accused has been proven beyond reasonable doubt. That is sufficient in itself to prove the offence of simple larceny set out in count 1 of the Information.

As to the offences of forgery, the crucial element is again that of identity of the accused as the person who forged the two cheques. There is no dispute before this court that the two cheques cashed on 5th November 1999 were forgeries. They had been forged. The signatures were not that of the CC and Selesa, though they would appear to be similar on a cursory glance. It was on that basis that the Bank permitted the cheques to be cashed. Agnes confirmed in evidence before the court that as far as she was concerned the signatures were in order and that there was money in their account.

It has also been confirmed in evidence before this court and I have no doubt about that in my mind that the accused was not authorized to cash those cheques.

It is interesting that in his submissions before this court, the accused denied forging the cheques and stealing the money **but did admit** cashing the cheques at the instruction of the CC. He said in his submissions that he was merely doing what he had been instructed to do by the CC. He never put this to the CC however when the CC gave evidence before this court. It was never even suggested to the CC that the cheques were actually given to the accused by him. It was only at the last minute that the accused has come up with this story that he cashed the cheques at the instruction of the CC and that he did not know anything about how they had been obtained or forged.

Has Prosecution established the burden of proof that this accused forged the two cheques? As pointed out in this judgment, Prosecution's case on the forgery offences is based entirely on circumstantial evidence. They say that because the accused was the one who presented the cheques and which I note he did not deny, then in the absence of any satisfactory explanation, it can be safely concluded that he also must have forged the two cheques. I agree.

Having proved and it being voluntarily admitted by this accused before this court in his submissions, that he had possession of the cheques on the morning of 5th November 1999 it is incumbent on him to

provide an explanation as to how those cheques came into his possession. Silence in this instance can be taken as an admission of guilt, that he has no explanation to offer. The accused however has gone beyond that to tell something to this court which cannot be believed and accepted. His words have to be weighed against that of the CC and Selesa. The CC in particular was clear, confident and frank about the events of the 3rd and 5th November 1999. I have no reason not to believe him and accept his words as true and correct. That places the accused in the hot seat. He had chosen to remain silent when opportunity was given to him to address the court by evidence or unsworn statement, and when addressing the court in his closing submissions he has sought to shift the blame onto the CC. If he was authorized by the CC, why didn't he give the money to the CC! The CC stated very clearly in his evidence before this court, that on the morning of the 5th November 1999 **straight after** the accused collected the money (this was admitted by the accused) from the Bank the CC was standing waiting for the accused outside the office of the NCO. The accused was then carrying it seems, there has been no suggestion otherwise, a blue striped bag full of the \$113,000-00 he had just collected from the Bank. One can say that he was loaded but alas with filthy lucre. But the money which this accused says was cashed at the instruction of the CC was never given to him! The CC never made any suggestions in his evidence that he knew that the accused had gone to cash money at the Bank at his instructions. He just happened to notice the bag the accused was carrying because he thought it contained the accused's clothes which he had collected to accompany him to Tulagi. If the CC did not receive the money and was not even aware of that money, where did it go? It can only mean one thing, the accused was not telling the truth in his submissions before this court. He stole those cheques, forged them and cashed them. The accused knows that this is a very serious case and that if he is convicted he will go to prison for it. Why should he cover up for the CC if the CC was the culprit in this matter? He should have exposed the whole thing from the beginning so that the truth comes out! No, I do not think there is any other truth to be exposed other than that everything points to him.

Further, in order for the signatures of the CC and Selesa to be successfully forged, it would have to be done by someone in the know, that is, someone familiar with their signatures or had access to them. The accused fell into that category. Further, the cheques could only have been stolen by someone who had access to them. Again the accused fell into the category of persons who had access. No one else has been blamed. Of crucial significance in all this has been the fact that the accused has failed to provide satisfactory explanation as to how the cheques came into his possession.

There is only one conclusion that this court can come to and that is that the cheques were stolen by this accused, forged by him and cashed on the morning of 5th November 1999. I am satisfied he is guilty of the offences of forgery and should also be convicted.

Before concluding, I need only point out that there was one other offence and much easier to prove which this accused has not been charged with. That is the offence of uttering contrary to S.343 of the Penal Code. The evidence is quite clear on this. He has not been charged however and therefore it is not necessary for me to consider that. I have also considered whether I had power to enter a conviction but again there appears to be no power to do that except for lesser offences.

Orders of the Court:

1. Enter a finding of guilty in respect of all three counts.
2. Enter conviction in respect of all three counts.

THE COURT.