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TRANSCRIPT OF PROCEEDINGS

DISTRICT COURT OF QUEENSLAND

CRIMINAL JURISDICTION

JUDGE RICHARDS

Indictment No 1191 of 2018

THE QUEEN

v.

GERARD MICHAEL NEILAND and
MICHAEL ANDREW NEILAND

BRISBANE

10.44 AM, MONDAY, 26 AUGUST 2019

Continued from 23.8.19

DAY 3

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

RESUMED **[10.45 am]**

HER HONOUR: The Crown has brought charges against two brothers, Gerard and Michael Neiland. Gerard was an employee of the CFMEU. Michael was a police officer. In 2015, the CFMEU absorbed the BLF into its organisation. As a result of the merger, Kane Pearson became assistant secretary of the Brisbane branch. Michael Ravbar was the president. Gerard Neiland was an organiser with the union and a minor member of the organisation.

It seems that sometime after joining the union, rumours started to circulate that Kane Pearson was disqualified from driving. Michael Ravbar asked his personal assistant to find out if this was true. He asked Jackie Collie to find out if he was able to drive as he had a union vehicle that he seemed to be driving. Toll records and petrol cards were checked to show the car was in fact being driven. Kane Pearson was asked if he had lost his licence and he lied, saying he was fine to drive.

Jackie Collie asked to call Gerard to find out if Pearson was authorised to drive. He contacted Michael Neiland, who searched police records and found out he could not drive. There's a reasonable inference open that he passed that information on to his brother, who in turn passed it on to either Ravbar or Collie. Initially, he told her that Pearson no longer held his licence. At a later stage, he gave her more details about the licence, such as where he lost it, the alcohol reading, the length of disqualification. This was done by, again, contacting his brother, who accessed police records.

Paula Masters did a Transport Department search and found out that he was unlicensed. Another police officer, it seems, had also done a traffic history search around the 19th of June. Pearson was again confronted by Ravbar but continued to lie, saying that he had his licence. In fact, it seems that Pearson was not driving, according to his evidence, but his wife was. If he'd simply disclosed this, he would have likely been able to use the car but paid for the petrol but the lie meant Ravbar and the union were entitled to be concerned about the possibility that their car was being driven by an unlicensed driver, thereby voiding insurance policies and exposing the union to civil actions in the event of an accident.

Charges in this case are brought pursuant to section 92 of the Criminal Code – 92A, sorry, of the Criminal Code, which provides that:

> *A public officer who, with intent to dishonestly gain a benefit for the officer or another person or to dishonestly cause a detriment to another person (a) deals with information gained because of office ... is guilty of a crime.*

The particulars in this case are said to be that Michael Neiland was a serving police officer of the Queensland Police Service. Two, Michael Neiland had an intent to dishonestly gain benefit for Gerard Neiland, namely, knowledge of information in

relation to Kane Pearson, which information Gerard Neiland would not have had access nor entitled to have access in the manner gained. Three, Michael Neiland without authority gained that information as a Queensland police service officer accessing the Queensland Police Service QPRIME computer information system. Four, Michael Neiland supplied that information to Gerard Neiland.

There are similar particulars in relation to count 5, which I will deal with later. Further particulars were supplied on the morning of the trial, namely, that the information supplied concerned details of a conviction which resulted in the driver's licence of Kane Pearson being disqualified at that time, in particular, the offence, the date and time of the offence, the level of blood alcohol concentration, the date of conviction, the period of disqualification and the court.

The elements in question on this application of no case to answer that the Crown has to prove beyond reasonable doubt is whether Michael Neiland intended to dishonestly gain benefit for Gerard by supplying that information about Kane Pearson. The dishonesty is said to be proven circumstantially by Michael accessing the information without authority. The benefit said to be gained to the recipient of the information that he was not entitled to get in the manner gained is difficult to define.

The benefit is defined – benefit itself is defined widely in the Criminal Code. It includes anything of benefit to a person, whether or not it has any inherent or tangible value, purpose or attribute. The benefit in this case is said to be the information supplied. That information undoubtedly had some benefit to the union in terms of accessing – sorry. Assessing liability for its employees. The benefit, however, is said to be intended to be gained by Gerard, that is, Michael intended that he personally be benefited.

There is, however, no evidence how that may have benefited him. There is no suggestion that this disadvantaged – that he would've been disadvantaged in his workplace if he didn't supply the information or enhanced his promotion opportunities if he did. I accept the Crown's submission that it is an intent to benefit but there must be some suggestion of what the benefit is. Although the definition is wide and it includes benefits without inherent or tangible value, there must, as I've said, be some benefit to be inferred or likely to follow.

The suggestion that it can be inferred in these circumstances is weakened by the fact of the evidence relating to count 5 in this case, where gratuitous information is passed on to Gerard by Michael in circumstances where there could not be any inference of benefit at all. Even if the definition of benefit is so wide as to cover this situation, the evidence in relation to dishonesty is also lacking. Michael used his own unique login to gain the information. Therefore, it was easily traceable.

Further, his brother was asking about a potential criminal offence occurring. It seemed to be accepted by Superintendent Johnson that he was entitled to access that information but may not have been entitled to pass that information on to his brother.

He referred to a standard of practice and an IMM, neither of which would be used – in use by frontline police officers. However, the access to the QPRIME system starts with a warning about use.

Whenever there is a login, the warning comes up initially and police officers have to click an "okay" button before they can actually access the system. The warning includes a warning in paragraph 1 that unauthorised access and use is strictly prohibited and the user is not to access information for personal reasons. In paragraph 2, it says the information contained on the computer system is confidential and must not be disclosed to unauthorised persons and then refers to section 10.1 of the Police Service Administration Act.

Importantly, it was accepted that whilst the warning talks of not accessing for personal reasons, the definition of personal reasons is not anywhere in the warning or in the manuals and it seems to come down to something that is not for the purposes of the police service. Whilst the warning does say in paragraph 2 that all information is confidential, it refers in the same paragraph to section 10.1 of the Public Service Administration Act, which creates an offence of improper disclosure of information. That Act says that a police officer cannot disclose information except for the purposes of the police service and then creates an exception to committing an offence under that Act if the disclosure – if the information is not of a confidential or privileged nature or the information would normally be made available to any member of the public on request.

The exception, in my view, here is valid. The conviction for drink-driving is made in open court. That information is available to the public at the time of the hearing and on request through the courts. Further, the Management Support Manual provides in 5.6 that:

> *In accordance with community expectations of openness and accountability and the legislative requirements of the Right to Information Act and the Information Privacy Act, the service subscribes to a philosophy of endeavouring to satisfy, where possible, any reasonable request for information made by a member of the public or external body, having regard to the efficient and effective discharge of law enforcement obligations, the proper administration of justice, the privacy of individuals and statutory compliance.*

This suggests that where information is available and readily to the public, that it is within the office's purview to supply that information to the public, and this is a case where the information would be readily available to the public. The Crown says the fact that the information was being made available to his brother is something that the jury can take into account as pointing to dishonesty. I accept that that would be a factor for the jury to consider when looking at that question.

However, an indispensable part of proving that dishonesty, whether it be objective dishonesty or subjective, is to show a particular – as particularised, that the access was without authority; that has not been demonstrated in this case, in my view, in

relation to counts 1 to 4 in any case. In fact, there is no evidence to prove that this information was not information which could legitimately be provided to an interested member of the public, albeit probably not through – by ringing someone's relative.

There are other problems with the case against Gerard. He is charged with procuring, but there is no evidence from which an inference could be drawn that he knew that his brother could not have provided that information legitimately to him. In relation to counts 1 and 2, there was no evidence that he was provided with any information other than the fact that Pearson had lost his licence, which was information readily available from the Department of Transport.

Finally, as can be inferred from my comment earlier in relation to count 5, there is, in my view, no evidence of any possibly benefit to Gerard by the disclosure that Cob was in jail. Accepting that the Crown only has to show an intent, as I previously said, they still must be able to point to some potential benefit. And simply gossiping or finding out information to gossip about is not a benefit; it is likely an offence under section 10.1 of the Police Administration Act, but not under section 92A of the Criminal Code. Accordingly, in relation to all of the charges and both of the accused, in my view, there is no case to answer. Do you want a directed verdict?

UNIDENTIFIED SPEAKER: Thank you, your Honour.

PROSECUTOR: I was going to ask for the return of the indictment to enter a nolle prosequi.

HER HONOUR: All right. Have you got anything you want to say about that?

UNIDENTIFIED SPEAKER: I've been here before. I can't stop my friend from doing that, your Honour.

PROSECUTOR: Can I ask to show that to my learned friend, your Honour.

HER HONOUR: Thank you.

PROSECUTOR: Your Honour, in respect of that indictment, I have endorsed the indictment; the Crown will not further proceed upon it.

HER HONOUR: Thank you. We will just get the jury back and let them know what has happened. I am going to answer their question as well so that they know.

THE JURY RETURNED **[11.02 am]**

BAILIFF: All jury present and correct, your Honour.

HER HONOUR: Thank you. Thanks for your patience, ladies and gentlemen. I'll answer your jury question before I tell you what's happened in your absence, because it'll make a bit more sense when you hear the answer to the question. And you might take some comfort in the fact that you were obviously curious about the very reason that there's been all this legal argument in your absence.

So under section 154 of the Justices Act, any member of the public can apply in writing and pay $15.65 for access to information in relation to a sentence proceeding, because sentences are held in open court; there are exceptions. So things like sexual assault, things like that, usually have a non-publication order on them but not things like drink-driving. The section doesn't say what information the member of the public would need to make the application, but you would expect that it would need to include the person's full name, date of birth and the approximate date of the sentence.

Now, that's what counsel's said here, but, actually, I don't think you need date of birth from what I know of the registry procedure; I think you just need someone's full name. You'd probably want some – at least the year of sentence so that they're not looking back over the 80 or 90 years or whatever that the court's been going. But you don't need a lot – huge amount of information to at least start that process. If the application is made, then the following information must be given to the person applying: so the complaint – so that's the initial charge, if you like – the order made by the court and any documentary exhibit.

So you remember Ms Rahmann gave evidence that the date, time, the blood alcohol level and the circumstances of the offending would be contained in documents that would be tendered as an exhibit in proceedings. And usually in a drink-driving offence, which is what this was, they tender what they call a blood alcohol certificate, which has got the reading and when that reading was taken, the time and the date. The order of the court would include the period of disqualification. So the magistrate announces the order, he endorses the order, and then that would be on the file. So that would be part of the information that would be retrieved by a member of the public.

So all that information would be available if you handed over your $15.65. I don't know how they get to that sum of money, but anyway, so that's that information. So what counsel – defence counsel submitted is that there's no case, there's no criminal offence here, and that's what there was some discussion about between myself and the barristers at the table. If you have a look at those charges that you've got in front of you, the five charges talk about Michael Neiland dealing with information – again, because he was a police officer – with intent to dishonestly gain a benefit for another person. So the dishonesty that the Crown was relying on was accessing the information without authority.

And you've heard that under the QPRIME system, effectively – Superintendent Johnson said, "Well, he was allowed to access it because someone was talking about someone driving disqualified, but he wasn't allowed to pass it on." But, in fact,

when you have a look at section 10.1 of the Police Service Administration Act – which you haven't got in front of you, but it doesn't really matter at the moment – there is that exception that Mr Holt was talking about, unless the information is something that is available to the public generally. And because you can access that information through the Magistrates Court, it is available to the public generally.

So the Crown can't prove that dishonesty because he was entitled to access the system, and there's an exception under the Act that he was entitled to – well, it wasn't without authority to pass that information on. So I – in those circumstances, I have held that there's no case in relation to counts 1 to 4. In relation to count 5, which is the conversation they had where Michael Neiland was looking up the police – they were talking, basically gossiping, about Mr Cob, and he looked up the computer system and said, "He's in jail."

In relation to that charge, the allegation is that that was with intent to gain benefit from Gerard Neiland. Really, it was just gossiping, so there's no benefit to Gerard. So again, that charge isn't made out. Now, that could be an offence under section 10.1 of the Police Service Administration Act because he accessed the computer, and it wasn't necessarily available to the public. But there also has to be that benefit, and the Crown hasn't proved that, so there's also no case in relation to that.

So the end result is that the Crown has withdrawn the charges, because I've told them they haven't got a case. So I'm going to discharge these two men, but I just wanted to explain to you why that was the case. So you don't have to reach a verdict in relation to the charges. So the Crown having indicated they won't proceed further on indictment number 191 of 2018, the accused, Michael Andrew Neiland and Gerard Michael Neiland, are discharged on that indictment. And we'll adjourn the court. Thanks very much, ladies and gentlemen.

ADJOURNED **[11.09 am]**

CCC EXHIBIT