

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO : HAC 13 OF 2014

STATE

-v-

GREGORY WILCOX STIRES

Counsels : Mr. J. Niudamu for the State  
Ms. L. Jiuta for the accused

Date of Trial : 16 July 2014 - 17 July 2014  
Date of Summing Up : 18 July 2014

SUMMING UP

Madam Assessors and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me – as the Judge who presided over this trial – to sum up the case to you on law and evidence. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. In other words you are the Judges of fact. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.

5. The counsel for Prosecution and the defence counsel made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the defence counsel. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinion, and your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions, but I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this courtroom. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. As assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.
12. In accessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
13. In this case the prosecution and the defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. They are of course an important part of the case. The agreement of these facts has avoided the calling of number of witnesses and thereby saved a lot of court time.

14. The agreed facts are:

1. It is agreed that Mr. Gregory Wilcox Stires is a suspect in this matter.
2. It is agreed that the suspect left Addis Ababa, Ethiopia on 30<sup>th</sup> January 2014 transiting to Hong Kong on Fiji Airway Flight FJ 392 and arrived at Nadi International Airport on 2<sup>nd</sup> February 2014.
3. It is agreed that in the presence of the suspect the spacing between the inside lining of the brown suitcase and outside was opened.
4. It is agreed that the following documents will be tendered by consent by both parties:
  - i. The Caution interview of the accused dated 2<sup>nd</sup> February 2014.
  - ii. The charge statement of the accused dated 4<sup>th</sup> February 2014.
  - iii. The Government Analyst Report dated 3<sup>rd</sup> February 2014.

5. Issue

**The issue that the Honourable Court is now left to deliberate on is:**

- 1. Whether the methamphetamine with a total weight of 3.8kg was found in possession of the suspect?**
- 2. Whether the methamphetamine with a total weight of 3.8kg belongs to the suspect?**

15. The charge against accused is a charge of unlawful possession of Illicit Drugs contrary to Section 5 (a) of the Illicit Drugs Control Act of 2004. The particulars of the offence, as alleged by the prosecution, are:

**GREGORY WILCOX STIRES** on the 2<sup>ND</sup> day of February 2014 at **NADI** in the **WESTERN DIVISION**, without lawful authority, was found in possession of illicit drugs, namely **METHAMPHETAMINES** weighing 3.8 kilograms.

16. I will now deal with the elements of the offence. The offence is defined under section 5 (a) of the Illicit Drugs Control Act 2004.

17. So, the elements of the offence in this case are that

- (1) The accused
- (2) Without lawful authority
- (3) Was in possession of illicit drug

18. If you accept the agreed fact of expert evidence that the substance in this case is Methamphetamine then as a matter of law I must direct you that Methamphetamine is an illicit drug.

19. A person acts with lawful authority in relation to an illicit drug if that person has been prescribed the drug on a medical ground or the person's lawful involves administration of an illicit drug. There is no suggestion that the accused person has acted with lawful authority in this case.
20. Possession is proven if the accused intentionally had the substance in his physical custody or control to the exclusion of others, except anyone who was acting in concert with him in the alleged offence.
21. The prosecution should also prove beyond reasonable doubt that in intentionally having such custody or control the accused did so with the knowledge or belief that the substance was an illicit drug not necessarily the illicit drug charged here, but a drug the possession of which is prohibited.
22. The issue for you to decide is in whose possession was it? Was it accused's drugs? The word possession simply means having something in one's custody and control with knowledge of such custody and control. So the question for you to decide is whether these drugs were in the accused's custody and control or not.
23. Apart from the elements of the offence, the identity of the person who alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person and connect him to the offence that he alleged to have been committed.
24. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a victim who saw, heard and felt the offence being committed.
25. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, Forensic Drug Analysis Certificate is an example if you believe that such a record was made. Then you can act on such evidence. You can take into account the contents of the document if you believe that contemporaneous recordings were made at the relevant time on the document upon examination of the exhibits. In fact in this case the Forensic Drug Analysis Certificate was an agreed document. Thus you can treat it as truth and act on it.
26. Expert evidence is also important to borne in mind. Usually, witnesses are not allowed to give opinions. They are allowed to give evidence on what they saw, heard or felt by their physical senses only, as described earlier. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions express on a particular fact to aid court and you to decide the issue/s before court on the basis of their learning, skill and experience.

27. The Government Analyst in this case, for example, is an expert witness. The Government Analyst, unlike any other witness, gives evidence and tells us her conclusion or opinion based on her examination of the drugs. That evidence is not accepted blindly. You will have to decide the issue of possession before you by yourself and you can make use of the opinion, if her reasons are convincing and acceptable to you; and, if such opinion is reached by considering all necessary matters that you think fit. In accepting Government Analyst's opinion, you are bound to take into account the rest of the evidence in the case.

28. In assessing evidence of witnesses you need to consider a series of tests. They are for examples:

**Test of means of opportunity:** That is whether the witness had opportunity to see, hear or feel what he/she is talking of in his/her evidence. Or whether the witness is talking of something out of pace mechanically created just out of a case against the other party.

**Probability and Improbability:** That is whether what the witness was talking about in his or her evidence is probable in the circumstances of the case. Or, whether what the witness talked about in his/her evidence is improbable given the circumstances of the case.

**Belatedness:** That is whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that was alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation to such delay.

**Spontaneity:** This is another important factor that you should consider. That is whether a witness has behaved in a natural or rational way in the circumstances that he/she is talking of, whether he/she has shown spontaneous response as a sensible human being and acted accordingly as demanded by the occasion.

**Consistency:** That is whether a witness telling a story on the same lines without variations and contradictions. You must see whether a witness is shown to have given a different version elsewhere. If so, what the witness has told court contradicts with his/her earlier version.

29. You need to consider all those matters in evaluating the evidence of witnesses. You shall, of course, not limit to those alone and you are free to consider any other factors that you may think fit and proper to assess the evidence of a witness. I have given only a few illustrations to help what to look for to evaluate evidence.

30. I will now deal with the summary of evidence in this case.

31. Prosecution called Jolame Lawebuka as the first witness. He is a customs officer at Nadi International airport. On 2.2.2014 he was on duty at arrival immigration at counter1. When he asked Mr. Gregory Wilcox 'Whether he was on holiday here?' The answer was 'yes'. However, in his arrival card he had ticked transit. When asked he said that he might go to Sydney next. However, his travel itinerary showed otherwise. He had travelled from Lome to Addis Ababa to Hong Kong before coming to Fiji. He became suspicious and profiled him for 100% examination. He had put A1 in his arrival card. That means 100% examination. He identified and tendered the arrival card marked P1 and travel itinerary marked P2. He had informed Sanjay Raj and Amit Ram about the passenger and had given the arrival card to Sanjay Raj. He also identified and tendered the passport of the accused marked P3. There were three boarding passes inside the passport. He identified and tendered those marked P4 A,B & C. He identified the accused in Court.
32. Under cross examination he admitted that he informed Yogendra Pal before he informed Sanjay Raj. He was unaware that accused first came from Cincinnati, Ohio. There was no such stamp on passport.
33. The second witness for the prosecution was Sanjay Raj. He is Custom officer with 19 years' experience. He was the overall supervisor of the baggage hall on 2.2.2014. He was informed by Custom officer Jolame that the accused was identified for 100% search of his luggage. They constantly monitored the passenger. After he collected the luggage, he came through Red channel first and moved to the Green channel. His luggage was x-rayed through the machine. Then he followed the passenger to the customs examination counter. He directed CO Amit Ram to conduct 100% luggage check.
34. Amit Ram had requested the passenger to open his luggage. They could see his personal clothes in brown suitcase and Black suitcase. There was also a laptop bag. He identified and tendered the brown suitcase marked P5, two tags attached to it marked P6 A & B and dismantled handle of the bag marked P7. When second x-ray was done they could see something wrapped around inside the bag. ION scan test gave positive result. It is machine which checks drugs and illicit substance. Third x-ray test was done on the bag without clothes. That showed wrapped around edges concealed with some substance. K9 unit was called and dog handler gave positive indication. Then CO Amit and CO Jolame unscrewed the handle and saw crystal like substance found around inner edges of the bag wrapped in black plastic.
35. Under cross examination he stated that the passenger was present at all times of the examination of the bag. At any time he did not try to obstruct their work.
36. The third witness for the prosecution was Asheeta Shankar. She is Bio security officer at the Nadi airport. On 2.2.2014 she was on duty. She was doing x-ray machine operation in Green channel. She was informed by Sanjay Raj about a passenger to be 100% checked. She identified the accused as the passenger. He had three bags. One laptop bag, one

brown suitcase and one black suitcase. The image of the brown bag was different. It showed some clothes and some warp around in the bag. She informed this to Supervisor.

37. Bag was brought back by Amit and Jolame. She showed them the image. After 15 minutes empty bag was brought again for x-ray. The image showed warp around in the bag. She identified the brown suitcase in Court.
38. Under cross examination she stated that she x- ray all passenger's bags. The x-ray machine is a detection tool. If the image is not normal the bags are sent for open and search.
39. The fourth witness for the prosecution was Amit Ram. He was working at the examination counter on 2.2.2014. Sanjay has brought a passenger with bags to do 100% examination. When asked, the passenger had stated that he had nothing to declare, the contents of the bags are his belongings and he packed those. He wanted to go ahead with the examination. Three bags were there. He opened the brown bag first. He took out all the clothes in bag. There were clothes and toiletries in the black bag. There was laptop and key board in the third bag. He had repacked each bag.
40. As the brown bag was unusual and surprisingly heavy even there was no content in it. He had taken back the bag to the x-ray machine. He noticed warp around in the bag. Third time bag was taken without clothes to the x-ray machine. Then they have used ION machine to check the bag. The machine indicated presence of Methamphetamine. For more confirmation K9 unit was called and the dog indicted the presence of drugs according to handler. Screwdriver was used to remove the handle bars and the screws were 3, 4 inches long indicating presence of concealment. They found concealment in the entire rim of the bag. The rubber on the top was pulled out and there was black plastic bag around the rim. There were pieces and chunks of White crystal like powder in the black plastic. He identified his initials on P5. He identified and tendered the clothes in the bag marked P8. They were big new clothes, jackets and denim jeans were there. He also identified and tendered some screws marked P9. The rubber cover was identified and tendered marked P10. The black plastic bag was identified and tendered marked P11. He showed the Court how the plastic was placed in the brown bag. He also identified and tendered the White crystal like substance marked P12. He prepared a custom cart note marked P13 and handed over the seized items with the suspect to Emma Rounds of the border police.
41. Under cross examination he stated that passenger was present during all times of the search. He never obstructed their work. He did not act suspiciously. He was cooperative. The suspect did not look surprised or shocked when he was shown the crystal like substance.
42. The next witness for the prosecution was Ropate Pahulu. He was based at the dog section in the airport on 2.2.2014. He had gone to custom office at baggage hall on instructions of PC Avikash. When his dog was cast to the brown baggage it indicated that there are drugs. He informed this to Amit and Jolame.

43. Under cross examination he stated that the baggage was open at that time and was on its own without other bags.
44. Prosecution called WPC Emma Rounds as the next witness. She is an officer with 10 years' experience. She had received instructions from her supervisor to attend a case of drugs on 2.2.2014. When she reached the customs office at the arrival lounge she had seen custom officer Amit itemizing the items in the suit case and suspect sitting on a bench. Amit briefed her and handed over the items seized with custom cart note. She confirmed by signing on it. She prepared a search list. It was given to Amit to sign. She escorted the items to the border police station. Suspect was escorted by another officer. She identified and tendered the search list marked P14. She made the relevant entries in station diary and locked the items in the exhibit room.
45. The following day she had taken those for testing at Koronivia. A report was given to her same day. She identified and tendered the original report marked P15. Defence had no objection for tendering the same as an agreed document. She also identified P5, P8 and P12.
46. Under cross examination by the defence she stated that suspect was cooperative when he was taken to the station. He did not obstruct police officers at any time. Black bag and items were given back to him.
47. The next witness was DC Savenaca Mara. He is an officer with 19 years' experience. He had caution interviewed the accused on 2.2.2014. His rights were given. He identified the accused in Court. He tendered the original caution interview notes marked P16 and read out the same. Defence had no objection and it is part of agreed documents.
48. Under cross examination he said the accused did not want to see a lawyer on the second day of the interview. The emails were checked only on the third day as they did not have easy access to emails at their office at that time. The accused was cooperative during the interview and did not obstruct at any time.
49. The last witness for the prosecution was Filipe Ratini. He had charged the accused on 4.2.2014. He identified the accused in Court and tendered the original charge statement marked P17. He read out the same to the Court. All the rights were given to the accused during the charge.
50. Defence had agreed for this document and this witness was not cross examined.
51. You watched each of these witnesses giving evidence in court. What was their demeanor like? How they react to being cross examined and re-examined? Were they evasive? How they conduct themselves generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether each witness's



evidence, or part of a witness's evidence is reliable, and therefore to accept and whether each witness's evidence, or part of evidence, is unreliable, and therefore to reject, in your deliberations. If you accept the evidence of these witnesses beyond reasonable doubt then you have to decide whether that evidence is sufficient to establish beyond reasonable doubt that the accused was in possession of an illicit drug.

52. After the prosecution case was closed you heard me explaining the accused his rights in defence.
53. The accused gave evidence. He stated that he is an accountant. He is doing business transactions. He is involved in leasing for 20 -25 years. He travels a lot. He left USA on 21-22 January 2014. He went to Lome in Togo. He was supposed to meet Lawrence Green and some other people there. Lawrence Green was the organizer of all his travel in this excursion. He knew him for about 6 months. He has not met him earlier. He was supposed to meet him in Australia. He may have met him in Lome. He kept contact over phone and email.
54. He went straight to Ivis hotel in Lome and stayed there for 7 days. He met Nelson there. He brought a brown suitcase and money. He was expecting gifts for Mr. Zubanda to be delivered by him as told by Mr. Green. It had clothes. He left next day. He had gone to Addis Ababa and to Hong Kong. He put the two suitcases in Lome as luggage and received them again in Fiji. He recalled what happened when he went through customs. He did not know crystal substance was inside the luggage. The purpose of his travel was to meet Mr. Green and Mr. Zubanda in Australia to discuss business transaction. They were both bankers and some sort of financial transaction. He was cooperating with police. He did not know crystal substance was illicit drugs. He was given all rights before questioning. He gave answers on his own free will.
55. Under cross examination he stated that he has a bachelor degree on accounting and he is in business since 1977. When he may have met Mr. Green in Lome he did ask him whether he is Mr. Green. When he was asked he went to Africa to bring these gifts his answer was that his intention was to meet these guys in Australia. He was not expecting to receive anything for bringing the bag from Africa to Australia. There were no illicit drugs in the bag to his knowledge.
56. With this evidence the accused closed his case.
57. You watched the accused giving evidence in court. What was his demeanor like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? His position taken up in Court is different from some of the answers in caution interview statement. (Questions and answer 168 & 169). It is up to you to decide whether you could accept his version and his version is sufficient to establish a reasonable doubt in the prosecution case. If you accept his version accused should be discharged.

Even if you reject his version still the prosecution should prove its case beyond reasonable doubt.

58. I must remind you that when an accused person has given evidence he assumes no onus of proof. That remains on the prosecution throughout. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

59. You will generally find that an accused gives an innocent explanation and one of the three situations then arises:

- (i) You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offence.
- (ii) Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is reasonable doubt in your minds and so again your opinion must be Not Guilty.
- (iii) The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offence. The situation then would be the same as if he had not given any evidence at all. He would not have discredited the evidence of the prosecution witnesses in any way. If prosecution evidence proves that he committed the offence then the proper opinion would be Guilty.

60. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every item of evidence and you should be reminded yourselves of all that evidence and form your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.

61. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt.

62. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of accused's guilt of the charge you must find him guilty for the charge. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.

63. Your possible opinions are as follows:


Charge of Unlawful Possession of Illicit Drugs

Accused Guilty or Not Guilty

64. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.

65. Any re-directions?



  
Sudharshana De Silva  
JUDGE

**AT LAUTOKA**  
**18<sup>TH</sup> July 2014**

**Solicitors for the State:**      **Office of the Director of Public Prosecution, Lautoka**  
**Solicitors for the Accused:**      **Legal Aid Commission, Lautoka**