

IN THE MAGISTRATE'S COURT**AT SUVA,FIJI****CRIMINAL CASE NO: 1975 of 2008****BETWEEN:** THE STATE**PROSECUTION****AND:** ROGER MEKAM**ACCUSED****BEFORE:** Resident Magistrate Mr. Thushara Rajasinghe,**COUNSEL:** Ms. Ana Tuiketeci and Mrs. Jayneeta Prasad for the Prosecution,
Mr. Valenitabua S.R. for the Accused,**Date of the Judgment:** 10th day of May 2013.

JUDGMENT

1. The accused person Mr. Roger Mekam is charged with two counts of "Possession of Papers intended to resemble and Pass as currency Notes" contrary to section 327 (e) of the Penal Code 17. The particulars of the offences are that,

“Roger Mekam in between the 26th day of September 2008 to the 14th day of October 2008 at Suva in the Central Division, without lawful authority or excuse, knowingly had in his custody or possession a paper upon which was printed such words, figures, letters, marks, lines or devices peculiar to and used in or on any currency note or bank note, namely paper resembling United States Treasure \$100 currency Note”

“Roger Mekam in between the 26th day of September 2008 to the 14th day of October 2008 at Suva in the Central Division, without lawful authority or excuse, knowingly had in his custody or possession a paper upon which was printed such words, figures, letters, marks, lines or devices peculiar to and used in or on any currency note or bank note, namely paper resembling United States Treasure \$100 currency Note, other than that described in count one”

2. The accused person pleaded not guilty for these two offences, wherefore, the case was set down for hearing. The accused person informed that he is challenging the admissibility of his confessionary statement made in his caution interview which the prosecution indicated that the prosecution will use it against the accused as evidence. The prosecution and the defence agreed to conduct voire dire hearing within the substantive hearing of this matter. During the hearing the Prosecution called seven witnesses and tendered exhibits as prosecution exhibits 1 to exhibits 7. The accused gave evidence on oaths however he did not called any other witness for the defence. At the conclusion of the hearing both parties were invited to file their respective final submission for which they filed accordingly.
3. Section 347 (e) of the Penal Code Act stipulates that

“Any person who, without lawful authority or excuse, the proof whereof lies on the accused--

uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines or devices have been printed or in anywise made as aforesaid, is guilty of a felony, and is liable to imprisonment for seven years”.

4. In view of the section 347 (e) of the Penal Code Act , the main elements of the offence of “Possession of Papers intended to resemble and Pass as currency Notes” are
 - i. Any Person
 - ii. Without lawful authority or excuse,
 - iii. Use or, Knowingly has in his custody or possession,
 - iv. Any paper upon which any such words, figures, letters, marks, lines or devices have printed or anywise made as aforesaid,

5. Bearing in mind the main elements of the offence of “Possession of Papers intended to resemble and Pass as currency Notes”, I first proceed with my ruling on voire dire hearing on the admissibility of the accused person’s statement in his caution interview as prosecution evidence. The accused alleged that he was not fluent in English language as he is from a French speaking country. He contended that the police did not inquire him of his English Proficiency and did not provide him with necessary assistance in language.

6. In the Privy Council case of **WONG KAM-MING v THE QUEEN (1982) A.C. 247** at 261 discussed the basic control over admissibility of statement, where it was held **““The basic control over admissibility of statement are found in the evidential rule that an admission must be voluntary i.e. not obtained through violence, fear or prejudice, oppression, threats and promises or other improper inducements. See decision of LORD SUMNER in IBRAHIM v. R (1914-15) AER 874 at 877. It is to the evidence that the court must turn for an answer to the voluntariness of the confessions.”**

7. In *Shiu Charan v R (F.C.A. Crim. App. 46/83)* held that ***“First, it must be established affirmatively by the Crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats or prejudice or inducement by offer of some advantage - what has been picturesquely described as “the flattery of hope or the tyranny of fear.” Ibrahim v R (1914) AC 599. DPP v Pin Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ c - E.” (State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996)***
8. ***His Lordship Justice Nawana*** in his ruling on voire dire in *State v Malelei (criminal case no:HAC 147/2007)* held that ***“A confession, as observed at the out-set of this ruling, is an objectionable item of evidence in view of its inherent infirmities. Its admission in evidence should, therefore, be scrupulously examined by court and apply the widest possible test that favours an accused person. Accordingly, having regard to the facts and circumstances of this case, I am inclined to adopt the four-pronged test laid down in the English PACE Act to expand the scope of the test enunciated in Shiu Charan v R (supra).***
9. The burden is on the prosecution to prove beyond reasonable doubt that the statement made in caution interview is made in voluntarily. ***(State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996).***
10. The prosecution called interviewing officer Cpl Sanjesh Nand, Witnessing Officer A.S.P. Puran Lal, W.P.C. Ulamila Buliran who typed the accused person’s caution interview, and the arresting officer I.P. Iqbal Khan. The accused gave evidence on oaths but did not call any other witness for the defence.

11. Cpl Sanjesh Nand stated in his evidence that he gave all rights to the accused person and he chose to be interviewed in English language. Accused was good in his English and understood and answered all the questions put on to him during the caution interview. Cpl Nand's evidence is collaborated by the evidence of A.S.P. Puran Lal and W.P.C. Ulamila where both of them affirmatively concurred with Cpl Nand's . I.P. Iqbal Khan who was the arresting officer in this matter stated in his evidence that he did not find any difficulties in his conversation with the accused in English Language as accused person speak in good English.
12. Accused contended in his evidence that he was grown up in a French speaking country. He in his cross examination stated that he had no proper opportunity to improve his English proficiency as he was always dealing with French speaking people while he was in his mother land and Dubai.
13. Having careful perusal of the evidence presented by the prosecution and the defence, I find that the accused had been living in Dubai as business merchandise prior to his arrival to Fiji Islands. He made contact with a Fijian Friend in Dubai and travelled to Fiji in order to start a business. Dubai is a English speaking commercial hub than a French and the demeanor and the way the accused used his English Language, I am satisfied that the accused person has a level of proficiency to understand and answer the questions put on to him by the interviewing officer during his caution interview. I accordingly accept the evidence of the prosecution and hold that the caution interview of the accused person was conducted by the police in fair and reasonable manner by providing the accused person all of his rights.
14. In view of these aforementioned findings, I rule that the confessionary statement of the accused person in his caution interview dated 15th of October 2008 is admissible as part of prosecution evidence in this trial against him.

15. Having ruled the admissibility of the record of caution interview of the accused person in this trial, I now proceed to pronounce my judgment in this substantive hearing. Prior to move with analyzing the evidence presented during the hearing, I turn back to the main elements of the offence and find that the burden of proof the element of “without lawful authority or excuse” is on the accused person.
16. The second prosecution witness I.P. Iqbal Khan stated in his evidence that he observed the accused person was in a discussion with another national and Mr. Moses Bulivou at Holiday Inn hotel. He subsequently followed the accused person and arrested him in his hotel room at the Hotel Tanoa Plaza. He found items tendered as Exhibit 1 and 2 of the prosecution in his hotel room.
17. Mr. Moses Bulivou, the fifth prosecution witness specifically stated that he met the accused person at Holiday Inn with Mr. Kim Yeon Wook and discussed with him how to make fake United State Currency note. Prior the that meeting, Mr. Bulivou accompanied Mr. Wook into the hotel room of the accused person at Tanoa Plaza where the accused person demonstrated how to make fake US currency note with the chemical items he had in his hotel room. Mr. Bulivou further stated that accused later handed over Mr. Wook a brown paper parcel wrapped inside one original US currency note with two fake notes.
18. Cpl Sanjesh Nand confirmed that he received said brown paper parcel which Mr. Bulivou explained in his evidence from Mr. Wook at the CID headquarters. These two fake notes with the original US currency note marked and tendered as prosecution exhibit 5A, 5B, and 5C.
19. The accused in his confessionary statement in his caution interview admitted that he promised Mr. Wook to make fake notes and agreed to share the benefit of this fake note making process. He admitted that he demonstrated Mr. Wook how to make fake currency note using the items he had in his hotel room at Tanoa Plaza.

20. **Lord Wilberforce** discussed the issue of “possession in **Warner v Metropolitan Police Commissioner (1969) 2 AC 256**) where he held that *“Ideally, a possessor of a thing has complete physical control over it, he has knowledge of its existence, its situation and its qualities. He has received it from a person who intends to confer possession of it and he has himself the intention to possess it exclusively of others. But these elements are seldom all present in situation with which the court have to deal, and where one or more of them is lacking, or incompletely present, it has to be decided whether the given approximation is such that possession may be held sufficiently established to satisfy the relevant rule of law. As it is put by Pollock and Wright, possession “ is defined by modes or events in which it commences or ceases and by legal incidents attached o it”.*
21. **Lord Guest** in **Warner v Metropolitan Police Commissioner (supra)** defined the possession by citing the Dictionary of English Law (Earl Jowit) (1959) stated that *“ Possession, the visible possibility of exercising physical control over a thing, coupled with the intention of doing so, either against all the world, or against all the world except certain persons. There are, therefore, three requisites of possession. First, there must be actual or potential physical control, secondly physical control is not possession, unless accompanied by intention, hence, if a thing is put into the hand of a sleeping person, he had not possession of it. Thirdly, the possibility and intention must be visible or evidenced by external signs, for if the thing shows no signs of being under the control of anyone, it is not possessed”.*
22. In line with the evidence and the judicial precedence discussed above, I find that the prosecution has provided evidence that the accused person had a meeting with Mr. Bulivou and Mr. Wook at Holiday Inn and prior to that meeting the accused met them at his hotel room and demonstrated how to make fake currency note. The accused then handed over to Mr. Wook the two fake notes wrapped with the original currency note covered with a brown paper in the presence of Mr. Bulivou. Further the accused has

admitted in his caution interview that he explained Mr. Wook how to make fake note and demonstrated it at his hotel room.

23. The accused person stated in his evidence that he came to Fiji to start a night club business and met Mr. Wook at his night club in Suva. He admitted that he discuss about the issue of this fake currency note but denied that he did any wrong. He explained that Mr. Wook insisted him to explain the process of fake note making. He further stated Mr. Wook came to his hotel room with some items and tried to make fake note by himself. He explained that the items found in his hotel room were from Dubai as he left Dubai for good and was heading to his home country after Fiji.

24. I am mindful with the judicial dicta of **Lord Reading CJ in *Abramovitch (1914) 84 L.J.K.B 397*** where the lordship held that *“if an explanation has been given by the accused, then it is for the jury to say whether on the whole of the evidence they are satisfied that the accused is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitle to be acquitted, inasmuch as the crown would then have failed to discharge the burden impose upon it by our law of satisfying the jury beyond reasonable doubt of the guilt of the accused. The onus of proof is never shifted in these cases; it always remains on the prosecution”*.

25. The accused person travelled to Fiji first time in his life and met Mr. Wook. He had a friend in Fiji whom he met once sometimes back in Dubai. With this limited connections and knowledge about Fiji, the accused claims that he came to Fiji leaving Dubai for good to invest in night club business. He allowed Mr. Wook whom he met only once and came to know recently in Fiji, to come into his hotel room with chemical substances and tested to make fake currency notes. In view of these explanations of the accused person, I question myself that could a person leave the country where he claims that he was doing well in business for good and travel to a country where he hardly had knowledge and connections to start a night club business. Could he allow a person he just met to discuss business possibilities to enter into his hotel room and performed

illegal activities? My reaction is negative for these quires. I accordingly disregard the explanation given by the accused person and accept the evidence of the prosecution witnesses and exhibits. Wherefore, I am satisfied that the prosecution has successfully proved that the accused person is guilty for these two counts of “Possession of Papers intended to resemble and Pass as currency Notes” beyond reasonable doubt.

26. In conclusion, I hold that the accused persons is found guilty for these two counts of “Possession of Papers intended to resemble and Pass as currency Notes” contrary to section 327 (e) of the Penal Code 17and convict for the same.

On this 10th day of May 2013.

R.D.R.Thushara Rajasinghe

Resident Magistrate, Suva.