

**IN THE MAGISTRATE'S COURT OF THE REPUBLIC OF FIJI**  
**AT SUVA**

**CRIMINAL CASE No: 402 of 2019**

**STATE**

**-Vs-**

**SIMIONE VUETAKI NAULUVULA**

**BEFORE** : Mr. Lakshitha Jayawardhana, Resident Magistrate  
**TRIAL ON** : 12<sup>th</sup> October 2022 and 02<sup>nd</sup> June 2023  
**COUNSEL** : Inspector Qerewaqa, L. for the Prosecution  
Ms. Deen, A. (Legal Aid Commission) for the Accused

**JUDGEMENT**

**A. INTRODUCTION**

1. The Accused in this case, Mr. **Simione Vuetakai Nauluvula** is charged with one count of **Robbery**, one count of **Escape from lawful custody**, and one count of **Resisting Arrest**. The charge dated 13-03-2019 reads as follows:

**Count One**

**Statement of offence (a)**

ROBBERY : Contrary to section 310(1) (a) (i) of the Crimes Act of 2009.

**Particulars of the offence(b)**

SIMIONE VUETAKI NAULUVULA, on the 1<sup>st</sup> day of March 2019, at Raiwaqa in the central division, robbed RAM KARAN and cash \$ 170.00 FJD the property of RAM KARAN and immediately before the robbery used force on the said RAM KARAN.

**Count Two**

**Statement of offence (a)**

ESCAPE FROM LAWFUL CUSTODY : Contrary to section 196 of the Crimes Act of 2009.

**Particulars of the offence(b)**

SIMIONE VUETAKI NAULUVULA, on the 12<sup>th</sup> day of March 2019, at Raiwaqa in the central division, being in lawful custody at Raiwaqa Police station, escaped from the custody of Detective police constable 3641 Taniela Tubuna.

**Count Three**

**Statement of offence (a)**

RESISTING ARREST : Contrary to section 277 (a) of the Crimes Act of 2009.

**Particulars of the offence(b)**

SIMIONE VUETAKI NAULUVULA, on the 12<sup>th</sup> day of March 2019, at Raiwaqa in the central division, resisted arrest from Police Constable 4156 Leone Masitabua while executing his duties.

2. Accused pleaded not guilty to all the charges. Accordingly, the hearing proceeded before this court on the 12<sup>th</sup> October 2022 for the prosecution's case and on 02<sup>nd</sup> June 2023 for the Defense case.
3. Prosecution called Four witnesses for their case. PW 01 : Mr. Ram Karan, PW02: Ms. Aritema Qereqretabua , PW03: PC 3641 Taniela Tubuna, and PW 04 PC 5479 Eliko Vakalau. Prosecution further submitted in evidence one exhibits marked as: "PEx01"- the Medical Examination Form of PW01 . At the conclusion of the prosecution's case, upon considering the defense counsel's request to file submission on No Case to Answer regarding the charge, the Court granted time to file submission on the said application. The same was filed on 12-12-2022. The prosecution did not file any submission and relied upon their evidence. After careful consideration of the prosecution's evidence and the defense written submission this court pronounced its ruling on NCA application on 29-12-2022. In the said ruling this court ruled that there is a case for the accused to answer on Count one and Count Two of the charge. The court further hold that the prosecution has not established a case against the accused on Count three of the charge and hence the accused abovenamed was acquitted on count three of the charge as per section 178 of the Criminal procedure Act 2009. The Court having satisfied that the prosecution has made a prima facie case against the accused on count one and count two of the charge, acted as per section 179 of the Criminal Procedure Act, read the charge to the accused, and given his rights to defense and called the defense. The counsel for the defense informed that she would lead the evidence of the accused. Hearing adjourned for defense case several times and finally on 02-06-2023 the accused gave evidence in his defense case. At the conclusion of the accused's evidence defense closed their case and informed court that they are not filing closing submissions and relied on the case record. Prosecution also opted not to make submissions and inform that they were relying on their evidence. Having considered all evidence adduced in this case, this Court now proceed to make its judgment.

**B. THE LAW**

4. In order to prove the Charges, the Prosecution must prove each of the elements of the offence beyond reasonable doubt. This is the standard of proof required in any criminal case. It is further an imperative and pertinent rule of law; in common law legal systems, that the burden of proving each element of an offence lies with the prosecution and it shall not in any circumstance or by any means shifts to the accused person. In Fiji, sections 57 and 58 of the Crimes Act confer this burden of proof on the prosecution. This burden of proof placed on the prosecution is a legal burden of proof and the standard of proof is beyond reasonable doubt. This principal of law shall guide this court right throughout this judgment.
5. If an Accused is relying on any law or exception created by law pursuant to section 59 of the Crimes Act 2009, there could only be an evidential burden on him. There could be a legal burden of proof on an Accused; only when the law expressly specifies the same, requires the Accused to prove certain matters or creates a presumption that a matter exist unless the contrary is proved pursuant to section 60 of the Crimes Act. The evidential burden on an Accused is to adduce or point out to the evidence of a reasonable possibility of the existence of such matters exist or do not exist and the legal burden on an Accused is to be discharged only on the balance of probabilities. Other than in the above instances there is no burden on an Accused to prove anything.
6. Crimes Act of 2009 defines the composition of elements of an offence as thus:  
“13. – (1) An offence consists of physical elements and fault elements.  
(2) However, the law that creates the offence may provide that there is no fault element for one or more physical elements.  
(3) The law that creates the offence may provide different fault elements for different physical elements.”
7. The active charges against the accused now are two. Count 01: Robbery and Count 02: Escape from lawful custody. Elements of the above offences can be identified as follows:
8. Section 310 (1) (a) (i) of Crimes Act 2009, **Robbery**:  
“310. – (1) A person commits an indictable offence (which is triable summarily) if he or she, commits theft and –  
(a) immediately before committing theft, he or she –  
(i) use force on another person; or  
(ii) threaten to use force then and there on another person –

With intent to commit theft or escape from the scene.”

9. Pursuant to this section, the elements of the offence of Robbery can be identified as follows;
  - a) A person (the accused),
  - b) commits theft,
  - c) and immediately before committing theft use force on another person,
  - d) with intent to commit theft or escape from the scene.
10. Section 196 of the Crimes Act No 2009, Escape from lawful custody reads as follows:

“196. A person commits a summary offence if he or she, being in lawful custody, escapes from lawful custody. ”
11. The elements of this offence can therefore be identified as follows:
  - a) A person (the Accused),
  - b) being in lawful custody,
  - c) escapes from lawful custody.
12. This court now consider the legal interpretations with regard to the faults elements of the two active offences in the charge.
  - a) Sections, 18 to 22 of the Crimes Act 2009 deals with the fault element of a criminal charge. As per section 18, ‘fault element for a particular physical element maybe intention, knowledge, recklessness or negligence’. Sections, 19 to 22 makes the definition of intention, knowledge, recklessness, and negligence.
  - b) Accordingly, with regard to the offence of robbery, the fault element of the offence is intention. The intention of the accused to commit theft and escape from the crime scene.
  - c) Section 23 of the Crimes Act 2009 deals with the offences that do not specify the fault element. Accordingly, if the law creating the offence does not specify a faults element for a physical element that consists only of conduct, the fault element is intention while the physical element that consist of circumstances or result, then the fault element shall be recklessness. In light of section 23, the fault element of offence of escaping from lawful custody is also the intention of the accused since physical element of that offence only consist of conduct of the accused.
13. According to the above legal analysis this court shall now consider and evaluate the evidence adduced during the hearing.

**C. EVIDENCE**

14. The prosecution witness one (PW 01) was Ram Karan. He was a Taxi driver. He did not remember the exact date of the incident. But he was robbed in 2019. About 2-3 years ago at Raiwaqa. It was happened on the day of the incident before 8.00 am. He parked his taxi No. LT 5529 beside the public toilet near old Raiwaqa market and went inside the toilet. As soon as he entered the washroom, someone grabbed him from behind and punched and kicked him on his chest, legs, and hands. By this attack he had been bleed. He fell down and counter attacked to the assailant. Then he escaped and ran towards his taxi. He saw the face of the assailant while inside the toilet. He was an iTaukei person, fit and fair and without beard. He did not have a beard. PW01 had seen the assailant for the first time on that day. There were no one other than two of them inside the toilet. The assailant was swearing at him in iTaukei language while punching him. He took the wallet of PW01, which had money in it from PW01's back pocket. When he ran towards the taxi and managed to get into it, he saw the assailant running towards his taxi. Before he start the taxi, the assailant open the rear door behind the driver's seat and grabbed PW01 again by his shirt collar. PW01 tried to come out of the taxi, the assailant then grabbed PW01's wallet and let him run away. PW 01 then ran towards the police post, and he saw the assailant running away with money box. It had about \$30-40 inside. The wallet had about \$100.00. He went to the police post and informed them. And told that the assailant ran towards Raiwaqa primary school. The police officers came with him in search of that iTaukie man. As soon as they went to Vishnu Deo primary school, they saw the iTaukei man coming through a short cut. The police officers interrogated the man, then there were a fight between them, and the assailant and police officer left and ran since he could not handle that person. Police officer told PW01 to lodge a complaint, he then lodged a complaint at Raiwaqa police station. He received injuries while he was robbed in that morning on his head, leg, and hand. He was given a medical examination form by police and produced to a doctor. He marked the said form as "PEx01." PW01 then identified the accused who was in the accused box as the assailant but stated that on the date of the incident he did not have the beard. After the injuries he sustained on that day, he could not work, fold his leg, or sit on the ground properly.
15. In cross examination PW01 stated that the assailant was tried to grab his wallet inside the toilet, but he failed. He managed to grab it when they were outside. He had seen that person and he was fair in complexion. PW01 admitted that in his statement to the police he had described the assailant as "an iTaukei boy about 6-foot-tall dark in complexion wearing a black round neck and ¾ pant." He further stated that whatever written in the statement is correct. PW 01 admitted that only point in his evidence that was wrong is that the complexion of the accused, whether he was dark or fair, other than that all of his evidence is true. Witness

stated that the accused is the same person who robbed him on the date of the incident but with the beard, the accused did not look like that. It was suggested by the defence that the only reason for the witness to point the accused as the person who robbed him on that day was, he is sitting in the accused box, to which the witness answered in affirmative.

16. In re-examination PW01 stated that he had seen the accused on three times during the date of the incident and he identified him at the first appearance in court also. And he was the same person who robbed him.
17. The second witness for the prosecution (PW02) was Ms. Aritema Qereqretabua. She had a car wash business, about 5 meters away from old Raiwaqa market. On 01-03-2019 at about 7.00 am she was washing a car. Then she heard somebody screaming from Raiwaqa Public Convenience. And she saw the Complainant (PW01) coming out from public convenience, looking a bit lost and he was scared. His name was Krithik Ram, that was what he told. He was bit short and bit dark in complexion. He told that an iTaukei guy had threatened him inside the public toilet. PW02 looked inside the public convenience then she saw the accused. He was highly intoxicated. She talked to him since she knew him for 11years. There were no one inside except Simione. Then he came out and went on his way. The complainant was standing outside and PW02 advised him to report to the police. When she questioned Simione, he verbally abused her and went on his way because he was intoxicated. The complainant told her that Simione touched his pocket. That was what had happened on that day and nothing else. She gave a statement to the police. PW 02 then identified the accused as Simione. He was having a beard at that time. He was the one she saw at the public convenience and when police came, she told them his name as Simione Navuluvalu.
18. In cross examination, PW 02 stated that on the date of the incident after she heard the screaming, an Indian man came out from the public toilet. She stand close to him and did not notice any injury or bleeding from that man. He looked scared but no injuries. She did not know what happened inside the toilet but heard screams. Simione did nothing to the Indian man while she was with him outside the public toilet. She inquired from Simione as to why he had threatened the Indian man. That confrontation did not take place for long. After Simione went she advised the Indian man to go and report to the police. Nothing else had happened outside the public convenience. She knew Simione for 11 years and on the date of the incident he was having a beard.
19. In re-examination PW 02 stated that from the time she heard the screaming from public convenience, no one came out or went inside it. She went inside the public convenience, she only saw Simione and no one else.

20. Third witness for the prosecution (PW03) was PC 3641 Taniela Tubuna. He stated that he with another team of police officers arrested a suspect named Simone Nauluvala on 12-03-2019 at about 8.45 am at Wailea settlement. They had received a report on a taxi driver by an iTaukei man namely Simone Nauluvala who was in Wailea settlement. PW 03 joined with the operations team and went to Wailea settlement and arrested the suspect and brought him to Raiwaqa police station. Suspect was handed over to the charge room. After that he had ran away from Raiwaqa police station. Then all the police officers available deployed on the road to find the suspect. They were managed to re-arrest the suspect on that day somewhere in Raiwaqa. PW03 knew the suspect for about 04 years and encountered him many times on the streets of Raiwaqa during patrols and normal duties. He did not know how he managed to escape from police station, after he handed the suspect over to charge room, he engaged in other work of crime office. The witness made a dock identification of the accused.
21. In cross examination PW03 stated that he had arrested Simone on 12-03-2019. He could not recall the date of the robbery. Simone was arrested and brought to Raiwaqa police station by PW03 and handed him to another officer. After that he received information that Simone had ran away from police station. He had seen Simone on Grantham Road, after he ran away. He did not see Simone ran away from the police station. He write a statement after re arrest Simone. Whatever he wrote in that statement had done in a hurry. PW03 refused the suggestion that Simone left the police station informing the police officers that he had to go somewhere. PW03 stressed that accused ran away from police station.
22. Fourth prosecution witness (PW04) is PC 5479 Eliko Vakalau. He was on duty at Raiwaqa police station on 12-03-2019 around 9.00 -9.30 am and was present when Simone brought to the station under arrest, and then he saw Simone ran out of the station. He ran across Nairai Road and thereafter did not know where he left. Crime Officer informed them to find and re arrest the suspect. They did a search beside Nairai Road. They managed to reach up to Bryce Street and met Simone. He was standing on a compound. Senior officer called him and asked him to get in to police vehicle, he obeyed. They had taken him back to Raiwaqa police station and handed over him to the charge room. PW04 then left the station. He knew Simone before this incident and he identified the accused who was in the accused box.
23. In cross-examination, PW04 stated that he saw Simone ran away from Raiwaqa police station on 12-03-2019 and soon after that he received instructions from his superiors to re-arrest the accused. Simone ran across Nairai road, which is located beside the Raiwaqa police station which situated at the corner of Nairai and Grantham Roads. Simone was rearrested at Bryce road, which is opposite Raiwaqa health centre. Bryce Road intercept with Grantham Road. He did not

recall DC 3641 Taniela was at police station, but he was not with him during the arrest. Simione was not walking at the time he saw him; he was actually running.

24. By leading the above evidence, prosecution closed their case.
25. The accused gave evidence in defence case. He stated that on 01<sup>st</sup> March 2019 around 7.00 am he was at Raiwaqa Rugby Club house. He was doing his morning gym work out. Asesela, Dawai and Rusi were with him. He left that place around 8.45 am. He was there from previous night, that was 28-02-2019 and slept at the club house. He went to his home from the club house. It was about 300 meters away; he crossed the rugby ground to reach his house. It was at Lot 52, Browning street, Raiwaqa. He knew about the case against him, he is a suspect of a robbery case which was held behind the old Raiwaqa market, and he denied the charge. On that day he wore a black training pants and a blue vest. He was not having a beard at that time. He left the rugby club with uncle Rusi, who left earlier than the accused. Accused went straight away to his home. He was arrested six days after the incident when he was at his parents place Wailea Settlement in Vatuwaqa. He was arrested at his parents place and escorted to Raiwaqa police station in a police vehicle by 3 police officers. He did not know their names but remembered their faces. While travelling, he informed the officers that he had to visit the health centre with his de facto partner for his baby's clinic. They told him to wait till they reach the station and then talk about it. When they reached the station, the officers left him at the reception. Then he informed one of the officers in the reception that he had to go to the health centre, and he walked from the police station towards his home. There were two police officers at the reception. One officer was standing in the front desk and the other one was taking down reports in the logbook. When he informed that he had to go to the health centre, the officer nodded, just like an approval. After that he left the police station through the main entrance. He was not stopped by police officers. He walked towards the health centre towards the junction of Bryce Street. While he was at the junction, police vehicle stopped in front of him. The police officers told him to get into the vehicle. Those are the same 3 officers escorted him from his home. He then boarded into the police car, and they took him back to police station. Then they locked him in the police station cell for the next 24 hours. Before entering the cell, police officers who were wearing civilian cloths verbally and physically assaulted him. After that they interviewed him. He gave his alibi, but the police officer never cross check his alibi. He was not produced to an identification parade. He further stated that he did not commit the alleged offence and since he had pending cases, police just put it on him.
26. In the cross examination the accused stated that he resides at Browning Street Raiwaqa and Mead Road housing. On 01-03-2019 Rusi left Raiwaqa Rugby club earlier than him and he followed Rusi. Accused went alone to his residence. Rusi and him just like went together, but Rusi went for work towards the road and



accused went home crossing the ground. Accused went on his own. He was walking alone to home. On his way he did not go to the old Raiwaqa market washroom. Six days after police came to his parents' house and arrested him. It was at Wailea settlement. Accused visits parents' home daily. He was born and raised in Raiwaqa. But he was not new to Wailea settlement. His parents moved in to Wailea because the four storied building went down. He lived in his grandfather's house in Browning street. He just saw Aritema recently since 2016 when they started car wash. Only those from Raiwaqa knew his family name Nauluvalu. Answering a question from court the accused stated that he did not know Aritema but recognised her face, she worked at car wash at old Raiwaqa market. But she never grow up from Raiwaqa to know him that well to know his family name. Anybody knows the structure of Raiwaqa police station, where the doors and counters located. On the date of the incident when he was escorted to Raiwaqa police station there were two officers were present in the station. The officers who arrested him to just wait there. They never told him about questioning all they told him to wait there. He was informed his reason for arrest at the time of the arrest at home. There were officers standing outside the police station. They were the officers who arrested him, came from southern division task force team. He came out and walk ed towards Bryce Street. From police station to Bryce street about 20 meters and off Bryce street is the health centre. He was not running, he was walking. He never flee the station; he informed the officers in the front desk. He never committed the alleged offence. He was at Raiwaqa Club house. Police never took his alibi seriously. He informed it during his caution interview and after he was granted bail, he informed it to the station. Police said they will come and take his alibi later.

27. There were no re-examination on the accused.

#### **D. ANALYSIS AND FINDINGS**

28. At the outset, I must place on the record the demeanour of four prosecution witnesses. PW01 and PW02 are lay witnesses. They gave evidence on an incident that took place about three years back. The other two witnesses were police officers. However, all of them gave evidence before this court clearly and confidently. After the scrutiny of the defence counsel's cross examination, their evidence on all material points in this case are unchallenged and uncontradictory. Thus, I accept the complainant PW01, PW02, PW03 and PE 04's evidence *in toto*.
29. I now consider whether the elements of offence are established by the prosecution's evidence to the standard of proof.
30. The identity of the accused abovenamed was never challenged in this case. All four witnesses made dock identification of the accused. PW01 (Complainant) is the eyewitnesses for count of Robbery while PW 04 is the eyewitness for the count of

escaping from lawful custody. Apart from that PW02 stated in her evidence that when she was told by the complainant (PW01) that an iTaukei man had threatened him inside the public convenience, she went and look inside. There she saw the accused and she recognised him as Simone Navuluvalu. She further stated that she knew him for about 11 years. Defence did not challenge the identification of the accused by the witnesses in cross examination. There are no evidence to disprove the identification of the accused by the eyewitnesses. I therefore consider that the element of the identity of the accused in both active counts in the charge has been proven beyond any reasonable doubt.

31. The elements of the offence of Robbery are:
  - a) A person (the accused),
  - b) commits theft,
  - c) and immediately before committing theft use force on another person,
  - d) with intent to commit theft or escape from the scene.
  
32. According to the complainant Ram Karan's (PW01) evidence, he was attacked by the accused inside the public convenience near the old Raiwaqa market. He was assaulted by the accused, and he sustained injuries. He had submitted a Medical Examination Form. (PEx01). According to it, the complainant was examined by a doctor on 01-03-2019 at about 10.00 am. In his evidence the complainant stated that he was robbed and assaulted at the Raiwaqa public convenience before 8.00 am on the date of the incident. Thus, his evidence is tally with the time of examination of the complainant by the doctor as per PEx01. Accused assaulted him and tried to grab his wallet, but he resisted and escaped to his taxi, then the accused chased him to the taxi and took his wallet and money box that was in the taxi and ran away. This evidence of the complainant was not discredited. This shows the intention of the accused to commit theft on the money of the complainant, and in order to achieve it, the accused assaulted the complainant, grabbed his wallet and money box. The above evidence of the complainant consist of the remaining three elements of the offence. Ms. Aritema's (PW 02) evidence corroborates the incident elicited by complainants evidence. According to her, she was at her car wash on 01-03-2019 at about 7.00 am, when she heard a scream from the nearby Raiwaqa old market public convenience. Then she saw the complainant came out of it looking scared. He told her that an iTaukei guy had threatened him inside the public convenience. When the witness went inside the public conveyance, she saw the accused inside it. There were no other person inside it. Therefore, PW02 corroborated the fact that on the date and at the time of the incident the accused and the complainant was at the place of the alleged offence, and they were alone. Also, she heard someone screaming inside the public convenience just before the complainant coming out of it. In cross examination, these evidence was not

challenged, contradicted, or not created a doubt on it. I therefore accept these evidence and thus, it establish the elements of the offence of robbery beyond reasonable doubt.

33. The elements of offence of escaping from lawful custody are as follows:
  - a) A person (the Accused),
  - b) being in lawful custody,
  - c) escapes from lawful custody.
  
34. PC 3641 Taniela Tubuna (PW03) was a member of the police team who arrested the accused on 12-03-2019 from Wailea settlement. On an information they received, they arrested the accused and escorted him to Raiwaqa police station. PW 03 had known the accused for about 04 years he had encountered him several times in the streets before the arrest. When they reached the police station, he handed over the accused to the charge room and went on to another duty at crimes office. Later, he was informed that the accused had fled the police station and he went alone with the other officers to arrest the accused. They were managed to rearrest him from somewhere in Raiwaqa. PC 5479 Eliko Vakalau (PW04) corroborated the above evidence. PW04 was on duty at Raiwaqa police station on 12-03-2019 at about 9.00 am and he saw the accused being brought to the Raiwaqa police station under arrest. Then he saw the accused ran away from the station and ran through Nairai Road. He went with a police team to re-arrest the accused and they search for him in Nairai Road. They were managed to arrest him at Bryce street. Both these witness refused the suggestion that the accused left the police station with permission of the police. The above evidence was not challenged or contradicted. I accept this evidence which established that the accused escaped the lawful custody of the police with the intention of fleeing Raiwaqa police station where he was detained after the initial arrest on 12-03-2019. That establish all the elements of the above offence without reasonable doubt.
  
35. Now I evaluate the evidence given by the accused in the defence case. Accused had had taken the defence of alibi. He had filed notice of alibi on 22-05-2019, citing 05 witnesses. However, he had not called any one of them to give evidence. In his evidence the accused stated that on 01st March 2019 around 7.00 am he was at Raiwaqa Rugby Club house. He slept there at previous night. He was doing his morning gym work out. Asesela, Dawai and Rusi were with him. He left that place around 8.45 am. He went to his home at Lot 52, Browning Street, which was about 300 meters away from the club house. He crossed the rugby ground to reach his house. He went alone. Rusi, who went just before him went to the road to go to work. He stated that he did not go to the Raiwaqa market washroom. He denied the allegation of robbing the complainant. Upon considering the above evidence

of the accused, it is clear that he is merely denying the charge of robbery against him. He claimed the defence of alibi, but no witness other than him testified on behalf of him in court. The court further observed the way in which the accused gave evidence to the fact whether he knew the witness Ms. Aritema. Answering the prosecution's question in cross examination, the accused stated that Aritema did not live in Wailea from 2015. Then he stated that he saw Aritema from 2016 after she started the car wash. But answering a question from court, the accused stated that he did not know a person named Aritema. Then again, he further clarified to court that he did not know her, but he recognised her face and she worked at a car wash up at the old Raiwaqa market. This clearly demonstrated the unreliability of the evidence given by the accused. The court, after having observed the demeanour of the accused and the totality of the evidence given by him, considered the accused as an unreliable witness and thus disbelieve his testimony.

36. With regard to the second count of escaping from lawful custody, accused explained it in his evidence that he informed the police officers who were at the reception that he had to go to the health centre and the officer then nodded, he thought that it was an approval, and he left the police station. This explanation of the accused is thoroughly unbelievable. This diminishes the credibility of the accused as a witness, and I disbelieve his evidence on this point.
37. In considering the whole evidence given by the accused before this court, I observe that his version is very unrealistic and self-contradictory. Therefore, this court cannot rely on the defence case. Further, according to the aforementioned reasons, I hold that the defence failed to create any reasonable doubt on any of the prosecution's evidence establish the elements of all the elements of count 01 and count 02 of the charge.
38. As per my ruling dated 29-12-2022, upon the prosecution being not submitting any evidence with regard to Count 03 of the charge (the offence of resisting arrest), this court has dismissed the count 03 in the charge.
39. In the above analysis of the evidence in this case, it is the overall finding of this court that the prosecution has proved all elements of Count 01 and Count 02 as per the charge, beyond any reasonable doubt.

## **E. CONCLUSION**

40. Upon careful consideration of the evidence that was adduced on behalf of the prosecution's case and the defence's case, this court is of the view that the prosecution has clearly established through credible and admissible evidence, all the elements of Count 01 and Count 02 of the charge and that there are no reasonable doubts whatsoever, on the proof of these counts against the accused.

41. As such this court finds that the accused above named is guilty to Count 01 and Count 02 of the charge and convict him as charged.

**F. ORDERS OF THE COURT**

42. The Accused is found guilty and convicted on Count 01 and Count 02 of the charge as charged.
43. Count 03 of the charge is dismissed and the accused therefore acquitted in count 03 of the charge.
44. Accused is directed to make submissions in mitigation, if any, before sentencing.

**G. RIGHT OF APPEAL.**

45. There is a right to appeal to the High Court.



  
**Lakshitha Jayawardhana**  
**Resident Magistrate**

At Suva, on this 28<sup>th</sup> day of June 2023.