

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 276 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. K. B. K. (Juvenile)
2. MALELI NAULIVOU
3. EREMASI RAILEQE

Counsel : Ms. P. Lata for State
Ms. L. Ratidara for 1st Accused
2nd and 3rd Accused In person

Hearing on : 09 November 2018

Sentenced on : 04 December 2018

PUNISHMENT

1. K. B. K., you have pleaded guilty to the charges produced below and were found guilty as charged accordingly;

COUNT 1

Statement of Offence

Aggravated Burglary: contrary to section 313 (1)(a) of the Crimes Act of 2009.

Particulars of Offence

K.B.K, MALELI NAULIVOU and **EREMASI RAILEQE** on the 30th day of June 2018 at Samabula in the Central Division, in the company of each other broke and entered into a dwelling house at 34 Bakshi Street, as a trespasser, with intent to commit theft.

COUNT 2

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act of 2009.

Particulars of Offence

K.B.K, MALELI NAULIVOU and **EREMASI RAILEQE** on the 30th day of June 2018 at Samabula in the Central Division, in the company of each other dishonestly appropriated (stole) 1 x black iPhone valued at \$6,000.00 Yuen (\$1,896.97 FJD), 1 x Vivo mobile phone valued at \$1,200.00 Yuen (\$379.62 FJD), 1 x Lenovo Laptop valued at \$3,000.00 Yuen (\$949.05 FJD), 1 x Lenovo Hard Drive valued at \$500.00 Yuen (\$158.08), Cash \$1,800.00 FJD, all to the total value of \$5,183.72 FJD the property of Liu Dezhi with the intention of permanently depriving Liu Dezhi of the said properties.

COUNT 3

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act of 2009.

Particulars of Offence

K.B.K, MALELI NAULIVOU and **EREMASI RAILEQE** on the 30th day of June 2018 at Samabula in the Central Division, in the company of each other dishonestly appropriated (stole) 2 x Vivo mobile phones valued at \$6,000.00 Yuen (\$1,896.87 FJD), 1 x Huawei mobile phone valued at \$1,000.00 Yuen (\$316.16 FJD), assorted clothes valued at \$1,500.00 Yuen (\$474.24 FJD), Cash \$450.00 FJD, all to the total value of \$3,137.27 FJD, the property of Singhtang Song with the intention of permanently depriving Singhtang Song of the said properties.

COUNT 4

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act of 2009.

Particulars of Offence

K.B.K, MALELI NAULIVOU and **EREMASI RAILEQE** on the 30th day of June 2018 at Samabula in the Central Division, in the company of each other dishonestly appropriated (stole) currency of \$500.00 Yuen (\$158.08 FJD) the

property of Yuen Yongschao with the intention of permanently depriving Yuen Yongschao of the said property.

COUNT 5

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act of 2009.

Particulars of Offence

K.B.K, MALELI NAULIVOU and EREMASI RAILEQE on the 30th day of June 2018 at Samabula in the Central Division, in the company of each other dishonestly appropriated (stole) 1 x Safe containing cash of \$20,000.00 FJD, the property of Shan Dong Li Dao Fishing Company with the intention of permanently depriving Shan Dong Li Dao of the said property.

COUNT 6

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act of 2009.

Particulars of Offence

K.B.K, MALELI NAULIVOU and EREMASI RAILEQE on the 30th day of June 2018 at Samabula in the Central Division, in the company of each other dishonestly appropriated (stole) \$1,100.00 Yuen currency (\$347.78 FJD), 2 x Superbji Chinese diamond necklace valued at \$4,000.00 Yuen (\$1,264.65 FJD), 1 x Chinese Gold Necklace valued at \$2,000.00 Yuen (\$632.32 FJD), Pandora bracelet valued at \$1,500.00 FJD, Black pearl pendant valued at \$699.00 FJD, Cash of \$700.00 FJD, Cash of \$1,000 Taiwan currency (\$68.89 FJD) \$3,500.00 USD currency (\$7346.85 FJD), \$40.00 NZD currency ((\$56.53 FJD), all to the total value of \$12,616.02 the property of Liu Hui Song with the intention of permanently depriving Liu Hui Song of the said properties.

COUNT 7

Statement of Offence

Theft: contrary to section 291 (1) of the Crimes Act of 2009.

Particulars of Offence

K.B.K, MALELI NAULIVOU and EREMASI RAILEQE on the 30th day of June 2018 at Samabula in the Central Division, in the company of each other dishonestly appropriated (stole) 1 x phone charger valued at \$50.00 FJD, Cash of \$8,000.00 FJD, 1 x black Air Max bag valued at \$100.00, 4 x shorts

valued at \$300.00, 1 x brown leather belt valued at \$300.00, 1 x NZ Driver's license card valued at \$100.00, 1 x NZ Visa card valued at \$20.00, 1 x cable charger valued at \$10.00, 1 x sunglass valued at \$700.00, 1 x pair eye glass valued at \$200.00, 1 x Go-Pro Camera valued at \$1,900.00, 1 x Chinese Passport valued at \$150.00, 2 x unused Vodafone sim cards valued at \$14.00, 1 x key tag valued at \$300.00, Cash of \$11,000.00 NZD (\$15,612.38 FJD), all to the total value of \$28,656.38, the property of Zou Zhiming with the intention of permanently depriving Zou Zhiming of the said properties.

2. You have admitted the following summary of facts;

The Complainants are:

1. *Liu Dezhi (hereafter PW1), 53 years, Director of Shan Dong Li Dao Fishing Company residing at 34 Bakshi Street, Samabula.*
2. *Singhtang Song (hereafter PW2), 28 years, Manager at Shan Dong Li Dao Fishing Company, residing at 34 Bakshi Street, Samabula.*
3. *Yuen Yongschao (hereafter PW3) 39 years, Accountant at Shan Dong Li Dao Fishing Company, residing at 34 Bakshi Street.*
4. *Zou Zhiming (hereafter PW4), 31 years Unemployed of 34 Bakshi Street, Samabula.*
5. *Liu Hui Song (hereafter PW5), 45 years, Unemployed of 34 Bakshi Street, Samabula.*

Accused Details:

1. *The Juvenile is K.B.K also known as B (hereafter juvenile), 16 years, school leaver of Lot 36 Leys Road, Raiwai.*

Relationship: No relationship.

1. *On 30th June 2018 at about 4.30pm at 34 Bakshi Street, Samabula PW1 securely locked his flat and went to work. PW2 and PW3 rented in the same flat with PW1 which was a 3 bedroom house.*
2. *When PW1, PW2 & PW3 came back from work at about 8.00pm, they noticed the porch grill forced opened with the front door opened. PW1 checked the house and noticed his bedroom ransacked and the following items stolen:*
 1. *1xblack Iphone valued at (\$6,000.00 Yuen) \$1,896.97 FJD*
 2. *1xVivo phone valued at (\$1,200.00 Yuen) \$ 379.62 FJD*
 3. *1xblack Lenovo brand laptop (\$3,000.00 Yuen) \$ 949.05 FJD*

4.	1xLenovo Portable Hard Drive (\$500.00 Yuen)	\$ 158.08 FJD
5.	Cash	\$1,800.00
	All to the total value of	<u>\$5,183.72</u>

3. PW2 checked his room and noticed the following items stolen:

1.	2 x Vivo mobile phones	\$6,000.00 (Yuen)	\$1,896.87 FJD
2.	1 x Huawei mobile phone	\$1,000.00 (Yuen)	\$ 316.16 FJD
3.	Assorted clothes	\$1,500.00 (Yuen)	\$ 474.24 FJD
4.	Cash		\$ 450.00 FJD
	All to the total value of		<u>\$3,137.27</u>

4. PW3 checked his room and noticed the following items stolen:

1.	1 x safe containing cash		\$20,000.00 FJD
2.	Cash		\$ 158.08 FJD
	All to the total value of		<u>\$20,158.08</u>

5. PW4 was having dinner with his other friends in the top front flat when he came to know about what happened with PW1, PW2 & PW3 at the top back flat. PW4 then ran down to check his flat and saw that his bedroom was ransacked. He saw that PW5's bedroom was also ransacked. PW4 and PW5 were renting together in the bottom flat which had 2 bedrooms. PW4 then rang PW5 and informed her about the incident. PW4 checked his room and noticed following items stolen:

1.	1xphone charger		\$ 50.00
2.	Cash		\$8,000.00
3.	1xblack air max bag		\$ 100.00
4.	4x shorts		\$ 300.00
5.	1xbrown leather belt		\$ 300.00
6.	1xNZ Driver's license card		\$ 100.00
7.	1x NZ Visa card		\$ 20.00
8.	1x cable charger		\$ 10.00
9.	1x sunglass		\$ 700.00
10.	1x pair eye glass		\$ 200.00
11.	1xgo-pro camera		\$1,900.00
12.	1xChinese passport		\$ 150.00
13.	2xunused Vodafone sim cards		\$ 14.00
14.	1xkey tag		\$ 300.00
15.	Cash (NZD \$15,612.38)		\$15,612.38
	All to the Total value of		<u>\$28,656.38</u>

6. PW5 noticed the following items stolen from her bedroom:

1.	Cash (\$1,100.00 Yuen)	\$ 347.78
2.	Cash	\$ 700.00
3.	Cash (\$1,000.00 Taiwan currency)	\$ 68.89
4.	1 x superbji Chinese diamond necklace (\$4,000.00 Yuen)	\$1,264.65
5.	1 x Chines gold necklace (\$2,000.00 Yuen)	\$ 632.32
6.	1 x Pandora bracelet	\$1,500.00
7.	1 x Black pearl pendant	\$ 699.00
	All to the total value of	<u>\$5,212.64</u>

7. Around 7.30pm to 8.00pm some police officers were patrolling along Rewa Street whereby they saw the Juvenile with 2 others boarding a taxi. The police officers approached them whereby they evaded them and ran away. The Police officers chased them however they managed to escape. In the chase, one of the accomplices dropped a black Nike bag and it was confiscated by the police officers and taken to Samabula Police Station.

8. The police officers checked the black Nike bag valued at \$100.00 which contained 4 x shorts valued at \$300.00, 1 x brown leather belt valued at \$300.00, 1 x NZ Driver's license card valued at \$100.00, 1 x NZ Visa card valued at \$20.00, 1 x cable charger valued at \$10.00, 1 x sunglasses valued at \$700.00, 1 x pair eye glass valued at \$200.00, 1 x go-pro camera valued at \$1,900.00, 1 x Chinese passport valued at \$150.00, 2 x unused Vodafone sim cards valued at \$14.00, 1 x key tag valued at \$300.00, cash of \$1,000.00 Taiwan currency (FJD \$68.89), \$100.00 Yuen.

9. The recovered items were worth \$4,194.48. The items were positively identified by PW4 and PW5.

10. The Juvenile was later arrested by police officers from Raiwai and they searched the Juvenile's pocket whereby 4 x \$100.00 notes were recovered.

11. The Juvenile was taken to Samabula Police Station and interviewed under caution in the presence of his mother Venina Rasinuvati whereby he admitted as follows:

- He went with Male and Masi (accomplices) to the last house on the left at Bakshi Street and went behind the fence which was a corrugated iron fence and then he noticed Male took out a small iron rod and open the fence with it [Q&A68-69].
- Male and Masi entered into the compound and told the Juvenile to wait and the Juvenile saw the accomplices went to the house and open a small window with that same rod and he saw them go inside the house [Q&A70 & 73].
- After a while the Juvenile saw his accomplices came outside the house and one of them was carrying 3 bags and the other one was carrying a safe [Q&A74&75].
- Then the Juvenile with his accomplices went to a banana tree near the fence and

opened the bags and took out the items and left one of the bags there. The accomplice gave the Juvenile a laptop but he threw it in the bushes near the banana tree because the accomplice had told him to do so [Q&A77].

- *One of the accomplices carried the bags and the other one carried the safe which he left it near a pawpaw tree near the roundabout. They then walked from there to Rewa Street where they stopped a taxi [Q&A 78].*
 - *When the Juvenile with his accomplices was inside the taxi, a police vehicle came past them and stopped their taxi. They saw that they were stopped by police they all got off and started running towards Jay Narayan College and went through the crossing at Tawake Street and climbed over the fence of Jai Narayan College. They ran across the ground jumped over the fence and got another taxi at Extension Street [Q&A 79].*
 - *The accomplices dropped the Juvenile at Raiwai and gave him \$500.00 and told him that they will go and pick the safe and come back [Q&A 80].*
 - *The Juvenile went to the Top Shop and bought a bottle of Rum for \$100.00 and drank it with his friends [Q&A 81].*
 - *Whilst the Juvenile was drinking with his friend some police officers came and arrested him and took him to Samabula Police Station [Q&A 82].*
 - *The Juvenile was shown 4 x \$100.00 that was found on him while he was being searched and he agreed that it was the part of the money given to him by the accomplices and that it was the money from the house they had broken into at Q&A 83-84.*
 - *The Juvenile was shown the black max air nike bag to which he admitted that it was one of the bags that was taken from the house and one of the accomplices was carrying it and he threw it away while being chased by the police officers Q&A 85.*
 - *The items in the bags that were 1 purple purse, 11 x \$100 Yuen notes, 1 x \$1000 Taiwan notes, 3 packets of 20s Double Happiness cigarettes, 1 Lenovo laptop charger, 4 shorts, 1 Go Pro Camera were shown to the Juvenile during the caution interview and he admitted that those were the items from inside the house at Q.A 86.*
12. *The Juvenile was then taken for the reconstruction of the scene whereby he showed the house where they had broken into at Bakshi Street and showed how they entered into the property of 34 Bakshi Street [Q&A89-90]. He showed the corrugated iron fence from where they entered and the banana tree where they opened the bags at [Q&A90-92]. The Juvenile showed the pawpaw tree where they left the safe at Q&A93. The Juvenile then pointed to the small window at the bottom flat of 34 Bakshi Street from where the accomplices had entered at Q&A94 [A copy of the Record of Interview is*

annexed].

13. *The Juvenile is charged and has pleaded guilty to one count of Aggravated Burglary contrary to section 313(1)(a) of the Crimes Act 2009 and six counts of Theft contrary to section 291(1) of Crimes Act 2009.*

3. The maximum penalty for the offence of aggravated burglary contrary to section 313 of the Crimes Act is an imprisonment term of 17 years. The offence of theft contrary to section 291 of the Crimes Act carries a maximum penalty of 10 years.
4. However, given the provisions of section 30 of the Juveniles Act, the maximum term of imprisonment to be imposed on you is 02 years.
5. The offences you are found guilty of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the offences you have committed.
6. You and the other offenders have committed the offence of aggravated burglary in relation to one premises but there are 06 theft charges due to the fact that there are different owners to the property you have stolen. Therefore, I would consider it reasonable to take into account the total value of the items stolen as an aggravating factor. According to the Summary of facts admitted by you the total value of the items stolen is FJD 62,348.09. The summary of facts does not reveal any other aggravating factor concerning you.
7. You are 16 years old. According to the submissions made by your counsel, you dropped out of Nabua Technical College in April 2017.
8. In your mitigation, apart from the fact that you have entered an early guilty plea you have submitted that;
 - a) You are a first offender;

- b) You are remorseful;
- c) Your share was \$500 and \$400 was recovered from you; and
- d) You have cooperated with the police.

9. Considering all the circumstances of the offending, the value of the items stolen and the above mitigating factors, I would order you to be imprisoned for a term of 12 months. You pleaded guilty to the offence on 19/09/18. However, according to the punishment imposed by the Magistrate Curt Suva on 22/10/18 in Cases No. 76, 83 and 84 of 2018 you have escaped from custody on the said date. In fact it was the third occasion you escaped from lawful custody. Given this conduct of yours I am not convinced that your guilty plea is a genuine expression of remorse. Therefore I consider it appropriate to grant you a discount of only 02 months in view of your early guilty plea. Accordingly, your final punishment is an imprisonment terms of 10 months.

10. You fall within the definition of “young person” under the Juveniles Act. As far as the instant case is concerned you are a first offender and you are a young offender. Through your conduct of escaping from custody not once but on three occasions, you have displayed the unruly nature of your character. In my view, it would not be in your best interest for this court to be lenient on you. In the circumstances, I have decided that I should not suspend your punishment.

11. It is submitted that you have been in custody since 04/07/18. Had you not escaped you would have been in custody for 05 months. The time you have spent in custody shall be regarded as a period already served by you in terms of section 24 of the Sentencing and Penalties Act. However, given that you have escaped from custody on three occasions, I hold that the time to be regarded as served should be 04 months. Accordingly, given the period you have spent in custody, the time remaining to be served is an imprisonment term of 06 months.

12. Unfortunately, your aforementioned conduct compels me to certify that you are of so unruly a character that you cannot be detained in an approved institution.
13. Your parents have failed to discharge their duties and responsibilities towards you in guiding you in the correct path. Moreover, you have used \$100 from the proceeds of the crime you took part in. In the circumstances, I would order that your parents should pay a fine of \$100 in terms of section 32(1)(c) of the Juveniles Act.
14. In summary, you are imprisoned for a term of 10 months. Given the period spent in custody, the time remaining to be served is an imprisonment term of 06 months. Your parents are fined \$100 and this fine should be paid to the High Court Criminal Registry on or before 04/03/19.
15. I order that you should serve the imprisonment term imposed in this case concurrently with your uncompleted imprisonment term.
16. Thirty (30) days to appeal to the Court of Appeal.



Vinsent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for the juvenile.