

COUNT 2

Statement of Offence

RESISTING ARREST: Contrary to Section 277(b) of the Crimes Act 2009.

Particulars of Offence

JOSUA VULIVULI, on the 5th day of September 2021 at Raiwaqa, Suva in the Central Division resisted arrest from **DETECTIVE POLICE CONSTABLE 2518 SEVANAIA SEDRA** in the due execution of his duty.

COUNT 3

Statement of Offence

RESISTING ARREST: Contrary to Section 277(b) of the Crimes Act 2009.

Particulars of Offence

TUPOU WAQABACA, on the 5th day of September 2021 at Raiwaqa, Suva in the Central Division resisted arrest from **DETECTIVE POLICE CORPORAL 3641 TANIELA TUBUNA** in the due execution of his duty.

COUNT 4

Statement of Offence

RESISTING ARREST: Contrary to Section 277(b) of the Crimes Act 2009.

Particulars of Offence

SIMIONE ROKACIKACI, on the 5th day of September 2021 at Raiwaqa, Suva in the Central Division resisted arrest from **DETECTIVE POLICE CONSTABLE 4579 JOSAI A SORO** in the due execution of his duty,

2. All 3 Accused pleaded not guilty to the charges filed against them by the Director of Public Prosecutions on 03rd of March 2022. The Voire Dire of this matter in relation to all 3 Accused commenced on 12th of September 2023 and concluded on the 15th of September 2023. Thereafter, on this Court admitting the caution interviews of the 2nd and the 3rd Accused on 18/09/2023 the proper trial to this matter commenced on the same day. For the Prosecution 7 witnesses gave evidence and when the Defense was called, all 3 Accused opted to give evidence in Court under cross-examination.
3. On 05th October 2023, delivering the judgement this Court convicted the 2nd and the 3rd Accused for **AGGRAVATED ROBBERY** contrary to **Section 311(1) (a)** of the **Crimes Act 2009** and acquitted the 1st Accused from the 1st count due to lack of evidence. However,

Court convicted all 3 Accused for **RESISTING ARREST** contrary to **Section 277(b)** of the **Crimes Act 2009** separately.

4. In comprehending with the gravity of the offence you have committed, I am mindful that the maximum sentence prescribed by law for Aggravated Robbery is 20 years' imprisonment and the maximum sentence for Resisting Arrest is imprisonment for 5 years.
5. However, the tariff for this offence depends on the nature and circumstances of the robbery at issue. In the case of **The State v EPARAMA TAWAKE**¹, the **Supreme Court of Fiji** has updated the applicable tariff for Aggravated Robbery, by the below pronouncement:

“Once the court has identified the level of harm suffered by the victim, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they pleaded guilty or not guilty and irrespective of previous convictions.”

	ROBBERY <i>(Offender alone and without a weapon)</i>	AGGRAVATED ROBBERY <i>(Offender either with another or with a weapon)</i>	AGGRAVATED ROBBERY <i>(Offender with another and with a weapon)</i>
HIGH	<i>Starting point: 5 years imprisonment Sentencing Range: 3 – 7 years</i>	<i>Starting Point: 7 years imprisonment Sentencing Range: 5 – 9 years</i>	<i>Starting Point: 9 years imprisonment Sentencing Range: 6 – 12 years imprisonment</i>
MEDIUM	<i>Starting point: 3 years imprisonment Sentencing Range: 1 – 5 years</i>	<i>Starting Point: 5 years imprisonment Sentencing Range: 3 – 7 years imprisonment</i>	<i>Starting point: 7 years imprisonment Sentencing Range: 5 – 9 years imprisonment</i>
LOW	<i>Starting Point: 18 months imprisonment Sentencing Range: 6 months – 3 years.</i>	<i>Starting Point: 3 years imprisonment Sentencing Range: 1 – 5 years imprisonment</i>	<i>Starting point: 5 years imprisonment. Sentencing Range: 3 – 7 years imprisonment.</i>

¹ CAV 0025 of 2019 [Court of Appeal No. AAU 0013 of 2017]

6. Though the tariff for Resisting Arrest had not been promulgated in a guideline judgement, the suitable range of the tariff had been pronounced in several cases. In this regard, in the cases of *Hicks v State [2011]*², *State v Vananalagi [2011]* and *State v Vacalaca [2018]*, the suitable range is identified as 6 to 12 months imprisonment.
7. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that **TUPOU WAQABACA** and **SIMIONE ROKACIKACI** were convicted on the counts they were found guilty on the same facts. Hence, I would impose an aggregate sentence against **TUPOU WAQABACA** and **SIMIONE ROKACIKACI** for Counts 1, 3 and 4.
8. **TUPOU WAQABACA** and **SIMIONE ROKACIKACI**, you have committed the offence of **Aggravated Robbery** with the assistance of one another. Therefore, in assessing the objective seriousness of offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In the present matter, you have committed this offence on a taxi driver who ventured to provide his services to you. Considering the circumstances of this case, **TUPOU WAQABACA** and **SIMIONE ROKACIKACI**, I start your sentence with a starting point of 5 years imprisonment, i.e. in the medium-range of the applicable tariff.
9. For the commission of the offence of **Resisting Arrest**, I impose a sentence of imprisonment of 9 months against the 1st Accused **JOSUA VULIVULI** separately for his conviction on count 2 of the information filed in this Court.
10. On promulgating the above table for tariff for the offence of Robbery in the case of *The State v EPARAMA TAWAKE*³, the Supreme Court has also ventured to identify aggravating and mitigating factors, as below:

² [2011] FJHC 455

³ Ibid

“Having identified the initial starting point for sentence, the court must then decide where within the sentencing range the sentence should be, adjusting the starting point upwards for aggravating factors and downward for mitigating ones. What follows is not an exhaustive list of aggravating factors, but these may be common ones:

- *Significant planning*
- *Prolonged nature of the robbery*
- *Offence committed in darkness.*
- *Particularly high value of the goods or sums targeted.*
- *Victim is chosen because of their vulnerability (for example age, infirmity or disability) or the victim is perceived to be vulnerable.*
- *Offender taking a leading role in the offence where it is committed with others.*
- *Deadly nature of the weapon used where the offender has a weapon.*
- *Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery.*
- *Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution.*

Again, what follows is not an exhaustive list of mitigating factors, but these may be common ones:

- *No or only minimal force was used.*
- *The offence was committed on the spur of the moment with little or no planning.*
- *The offender committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure.*
- *No relevant previous conviction*
- *Genuine remorse evidenced, for example by voluntary reparation of to the victim.*

11. In aggravation, Prosecution informs this Court that you have pre-planned the commission of this robbery with others and that it was committed on an unsuspecting vulnerable taxi driver who was proceeding with his day today business.

12. **TUPOU WAQABACA** and **SIMIONE ROKACIKACI**, the operators of taxis provide an invaluable service to our country in many ways. In this regard, on one hand they provide a valuable day to day mode of transportation to the citizens of our country and on the other hand they provide the inextricable support service to the tourist industry of our country, an industry that is the apical contributor to the economy of Fiji. In relation to robbery of taxi

drivers, it is pertinent to highlight the observations made by **His Lordship Justice Gerard Winter** in the case of **Vilikesa Koroivuata v State**⁴, as below:



Violent and armed robberies of taxi drivers are all too frequent. The taxi industry serves this country well. It provides a cheap vital link in short and medium haul transport. Taxi drivers are particularly exposed to the risk of robbery. They are defenseless victims. The risk of personal harm they take every day by simply going about their business can only be ameliorated by harsh deterrent sentences that might instill in perspective muggers the knowledge that if they hurt or harm a taxi driver, they will receive a lengthy term of imprisonment.”

13. In view of these aggravating factors, **TUPOU WAQABACA** and **SIMIONE ROKACIKACI**, I increase your sentence by one (01) year.
14. By the Antecedent Reports filed by Prosecution informs this Court that the 1st Accused **JOSUA VULIVULI** has 2 previous convictions for theft and failure comply with government orders. Further, the antecedent report of the 2nd Accused **TUPOU WAQABACA** informs that he has 01 previous conviction for Aggravated Robbery. In this regard, **Section 4 (2) (i)** of the **Sentencing and Penalties Act of 2009** instructs the Court to consider the previous character of the Accused. Considering the facts divulged of previous convictions, **JOSUA VULIVULI** and **TUPOU WAQABACA**, I increase your sentence by 06 months.
15. In mitigation, the counsel appearing for all 3 accused have informed Court that 3 of you are of tender age and you have a high rehabilitation potential. Considering this pertinent factor and the duration of the sentence against each of you, I reduce the sentence of **TUPOU WAQABACA** and **SIMIONE ROKACIKACI** by one (01) year and reduce the sentence of **JOSUA VULIVULI** by six (06) months.
16. Further, your counsel brings to the attention of this Court that **JOSUA VULIVULI** has been in custody for 06 months, **TUPOU WAQABACA** has been in custody for 07 months and **SIMIONE ROKACIKACI** has been in custody for almost a year in relation to this matter, which periods should be deducted from your sentences separately.

⁴ HAA 064 of 2004

17. Taking all these factors into consideration, **JOSUA VULIVULI**, I impose on you 3 months imprisonment to operate forthwith, as the sentence for the count you were convicted. **TUPOU WAQABACA**, I impose on you 59 months (4 years and 11 months) imprisonment forthwith with an applicable non-parole period of 53 months (4 years and 05 months) under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009** as the sentence for the counts you were convicted. Considering this Accused had been convicted for another matter by this Court, referring to section 22(1) of the **Sentencing and Penalties Act**, this Court directs this sentence to take place concurrently with the previous sentence. **SIMIONE ROKACIKACI**, I impose on you 48 months (4 years) imprisonment with an applicable non-parole period of 42 months (3 years and 06 months) under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009** as the sentence for the counts you were convicted.

18. You have thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Justice Dr. Thushara Kumarage

At Suva
This 27th day of October 2023

cc: Office of Director of Public Prosecutions
Office of Legal Aid Commission