

IN THE HIGH COURT OF FIJI
AT LAUTOKA

[CRIMINAL JURISDICTION]

Case No: HAC 022 of 2024

BETWEEN

JUSTIN HO STEVEN MASHI HO – 1st ACCUSED

DAVID OTTO HERITAGE – 2nd ACCUSED

LOIUE FRANK LOGAIVAU – 3rd ACCUSED

SAKIUSA TUVA – 5th ACCUSED

JALE AUKEREA – 6th ACCUSED

CATHY TUIRABE – 8th ACCUSED

ACCUSED

AND

THE STATE

PROSECUTION

Counsel:

Mr I. Khan and Mr Heritage for 1st Accused

Ms L Volau for 2nd Accused

Mr M. Anthony for 3rd Accused

Mr T. Varinava for 5th Accused

Mr E. Wainiqolo for 6th Accused

Ms B. Kumari for 8th Accused

Mr J Rabuku with Mr Nasa for Prosecution

Dates of Hearing:

23 April 2025- 15 May 2025

Date of Ruling:

21 May 2025

RULING ON VOIR DIRE

1. The Prosecution seek to adduce into evidence the record of caution interview of each Accused.
2. Each Accused filed separate grounds of *voir dire* contesting the admissibility of their caution interviews conducted by the police.
3. At the hearing, the Prosecution called 23 police witnesses and tendered each Accused's record of caution interview as prosecution exhibits. The caution interviews of the 1st, 2nd and 3rd Accused were fully video recorded. The compact discs (CDs) that retrieved the video recordings, and their transcripts were also tendered in evidence.
4. Only the 2nd, 5th, 6th and 8th Accused persons chose to give evidence. 1st and 3rd Accused exercised their right to remain silent which in essence means that there is nothing under oath to dispute what each police witness stated in evidence in respect of their *voir dire* grounds.

The Law

5. The law in Fiji on admissibility of confessional statements made by a person in custody to a person in authority is well established. In *Ganga Ram & Shiu Charan v FCA*¹ after reviewing the House of Lords decision in *Ibrahim v R*², the Privy Council decision in *DPP v Ping Lin*³ and the House of Lord decision in *R v Sang*⁴, the Fiji Court of Appeal stated the common law principle as follows:

It will be remembered that there are two matters each of which requires consideration in this area.

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 tyranny of fear”.

¹ Crm App. Case No. 046 of 1983,

² [1914] AC 599

³ [1976] AC 574

⁴ [1980] AC 436

Second, even if such voluntariness is established there is also a 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 unfair treatment...'

Breach of Constitutional Rights in General

6. The grounds of *voir dire* filed by each Accused are primarily based on the allegation that their admissions were obtained in violating of their constitutional rights guaranteed in Section 13 of the Constitution and therefore they constitute unlawfully obtained evidence. In view of these grounds, the Court must first examine whether there was any breach of constitutional rights as alleged by the Accused. If the Court finds that constitutional rights have been breached, it must then proceed to see whether it is fair to allow the admission of the interviews despite those violations. If the admission of the interview/s is prejudicial to the Accused, the Court in its discretion must exclude the interview/s.
7. Nowadays, the test for admissibility of confessional statements is mostly governed by the Bill of Rights Chapter of the Constitution. Prior to the introduction of Bill of Rights in the Constitution of Fiji⁵ the admissibility of confessional statements, was largely governed by common law, Judges Rules and the discretionary powers vested in the Courts.
8. The introduction of Bill of Rights has added a new dimension to the laws governing the admissibility of confessional statements of accused in a criminal trial. The introduction of Bill of Rights had a great impact on the police procedures in detection of crimes and in particular matters relating to questioning of suspects.
9. The governing principles to determine the admissibility of a confessional statements after the introduction of the Bill of Rights were summarized by Shameem J in *State v Vasuitoga & Qurai*⁶ as follows:

When a suspect gives an inculpatory statement to a person in authority, it must be shown by the prosecution to have been obtained voluntarily and without unfairness or oppression. **Further the prosecution must prove that the confession was obtained in accordance with the Constitution, and if there were breaches of the rights of the suspects under the Constitution, that the suspect was not thereby prejudiced.** The prosecution must prove all these issues to the satisfaction of the court, beyond reasonable doubt.

⁵ A Bill of Rights Chapter was first introduced to Fiji on 27 July 1988

⁶ Criminal Case No. HAC 008/06S (12 February 2007)

The test for voluntariness is whether the suspect gave his statement freely, without oppression or hope of advantage, or fear of disadvantage. **The purpose of the rule of admissibility and of the suspect's rights under the Constitution is to remove the inherent imbalance of power which exists when a suspect is questioned in custody, whilst preserving the right of the police to question anyone in the course of proper investigations and in the public interest. In the determining of issues relevant to the admissibility of confessions, these are the principles to be considered and balanced.** [Emphasis added]

10. In summary, the test of admissibility of all confessional statements made to a person in authority is whether that was made freely and not as a result of oppression, threats, assaults, trickery, inducements made to the suspect by the person or persons in authority. Where the rights of the suspect under the Constitution have been breached, unfairness also leads to the exclusion of the confessional statement unless the prosecution can show that the suspect was not prejudiced thereby.
11. The burden of proving voluntariness, lack of oppression, compliance with constitutional rights, if there is noncompliance, lack of prejudice to the accused rests at all times with the prosecution. The prosecution must prove these matters beyond a reasonable doubt. In this ruling, I have reminded myself of that.
12. Our Constitution does not prohibit admission of unlawfully obtained evidence if it can be shown that the interests of justice require it to be admitted. Section 14(2)(k) of the Constitution provides thus: *Every person charged with an offence has the right— not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted.* The Court, therefore, now has a discretion under Section 14(2)(k) of the Constitution as to whether a confessional statement is admissible.
13. Interests of justice encompass the rights of a suspect/accused enshrined in Sections 13 and 14 of the Constitution on one hand and the interests of the public or the State on the other hand. Therefore, in deciding the issue of admissibility, the courts are supposed to strike a right balance between the interests of the accused and those of the public / the State. The Court is under a duty in its general approach to the protection in the Bill of Rights to balance the two competing fundamental values in society namely on the one hand the public interest in the conviction of those who commit criminal offences and on the other hand the public interest in the protection of individuals from unlawful and unfair treatment.

14. The ascertainment of the truth is the ultimate goal in criminal justice⁷ by ensuring that only the guilty are convicted and the innocent are acquitted. If a statement obtained unlawfully/unconstitutionally from a suspect lead to a discovery of real evidence (E.g. illicit drugs) implicating him in the alleged crime, the interests of justice would require his/her statement to be admitted in evidence despite the right violation because it ascertains the truth⁸. However, if the alleged right violation is so serious that it tantamount, for example to police torture, the court in its discretion should exclude the improperly obtained evidence because the acceptance of such evidence would tend to encourage improper police practices. No accused in this case alleged that torture was used to obtain confessional statements.
15. As a matter of English domestic law relevant evidence unlawfully obtained is admissible (*R v Sang* [1980] AC 402). The court in its discretion may however refuse to allow such evidence to be given under the provisions of section 78 (1) of PACE⁹ if, having regard to all the circumstances “including the circumstances in which the evidence was obtained”, it would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.
16. One of the issues raised in *R v Mason & ors.*¹⁰ was the admissibility of evidence obtained by covert surveillance of the defendants in the custody suite of a police station which had been conducted in breach of article 8 of ECtHR. Lord Woolf giving the judgment said (para. 74) that non-compliance with article 8 did not mean that the evidence could not be relied on. In para. 75 he said:

It is the responsibility of the Government to provide remedies against ... violation of article 8. However, the remedy does not have to be the exclusion of the evidence. The remedy can be the finding which we have now made, that there has been a breach of article 8 or it can be an award of compensation. The ECtHR recognises that to insist on the exclusion of evidence could in itself result in a greater injustice to the public than the infringement of article 8 creates for the appellants. The infringement is, however, a matter which the trial judge is required to take into account when exercising his decision under section 78 of PACE.

⁷ The Supreme Court of the USA noted in *Tehan v US* (1966) 382 US 406 at 416

⁸ The SC of Canada in *Wray* [1971] SCR 272 held that Wray’s confession was improperly obtained, but held that the rifle that the police were able to find as a result of the confession was admissible. The confession had been excluded under the common rule that excluded involuntary confessions because they are often unreliable. But the Supreme Court held parts of Wray’s statement that was confirmed by the finding of the gun admissible.

⁹ PECE stands for the Police and Criminal Evidence Act 1984.

¹⁰ [2002] 2 Cr. App. R. 628

17. In *R v Khan (Sultan)*¹¹ an electronic listening device had been used to record a conversation between alleged drug importers. The House of Lords decided that evidence of the conversation was admissible even if it had been illegally obtained. After referring to *Schenk* Lord Nolan (with whom the other members of the House agreed) said (p. 582B-D):

But if the behaviour of the police in the particular case amounts to an apparent or probable breach of some relevant law or Convention, common sense dictates that this is a consideration which may be taken into account for what it is worth. Its significance however, will normally be determined not so much by its apparent unlawfulness or irregularity as upon its effect, taken as a whole, upon the fairness or unfairness of the proceedings. The fact that the behaviour in question constitutes a breach of the Convention or of a foreign law can plainly be of no greater significance per se than if it constituted a breach of English law. Upon the facts of the present case, in agreement with the Court of Appeal, I consider that the judge was fully entitled to hold that the circumstances in which the relevant evidence was obtained, even if they constitute a breach of article 8, were not such as to require the exclusion of the evidence.

18. In *R v Button*¹² it was contended that by permitting the prosecution to make use of the material unlawfully obtained the court is acting in a way which is inconsistent with the enjoyment of the right. The Court of Appeal held:

If it decides to admit the evidence it is not itself acting in breach of article 8. The intrusion or interference has already occurred, the evidence obtained is admissible under English law and so the court's obligation is confined to deciding whether or not, having regard to the way in which the evidence was obtained, it would be fair to admit it.

19. Similarly, in Fiji, any remedy for a breach of constitutional rights lies outside the scope of criminal trial. So far as the outcome of the trial-within trial is concerned the alleged breach of Section 13 of the Constitution is only relevant if it interfered with the right of the accused to a fair trial. The Constitution under Section 44 provides for remedies where constitutional rights have been infringed.

¹¹ [1997] AC 558

¹²[2005] All ER(D) 75(Mar)[2005]EWCA Crim516 Criminal Division England and Wales

20. Where a court concludes that evidence was obtained in a manner that infringed or denied any rights guaranteed by the Constitution, the evidence shall be excluded if it was not established by the State that, having regard to all the circumstances, the admission of it in the proceedings would not be unfair and not bring the administration of justice into disrepute.
21. In 2009, the Supreme Court of Canada in R v Grant¹³ took 'a fresh look' at the subject. The majority decision, delivered by Chief Justice Beverley McLachlin and Justice Louise Charron, set out a new framework. In deciding whether to exclude or admit evidence, they look at three factors: the seriousness of the Charter¹⁴infringing conduct of the police; its impact on the accused; and thirdly, on what the long-term effect would be of the exclusion or admission of this illegally obtained evidence. This third line of inquiry, the court stated¹⁵:

...[a]sk whether the truth-seeking function of the criminal trial process would be better served by admission of the evidence, or by its exclusion. Society generally expects that a criminal allegation will be adjudicated on its merits, but there are cases where admission of the evidence would harm the administration of justice. So, for example, the long-term effect of allowing in real evidence in cases where the police have *deliberately or flagrantly* used improper methods in questioning the accused to discover the evidence would harm the administration of justice and so should be excluded under this test. An innocent and trivial breach by the police, however, would be admissible. Such a rule acts as a deterrent against abusive tactics /practices by the police.

22. I am of the view that the Canadian approach discussed in Grant should be followed to give effect to the spirit of Section 14(2) (k) of the Constitution of Fiji and in deciding admissibility issues when right breaches have been alleged.

**Alleged Violation of the Right Guaranteed by Section 13(1)(f) the Constitution
(Detention beyond 48 hours)**

23. Each of the Accused alleges that the police violated the right guaranteed to them under Section 13(1)(f) of the Constitution and therefore the interview recorded in violation of their right must be excluded from evidence.

¹³ R v Grant [2009]2 SCR 353 at para 3

¹⁴ The 1982 Canadian Charter of Rights and Freedoms

¹⁵ Ibid at para 128

24. Section 13(1)(f) of the Constitution provides that *every person who is arrested or detained has the right to be brought before a court as soon as possible, but in any case, not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter [Emphasis added]*.
25. There is no dispute that the Accused were detained in police custody for more than 48 hours before they were produced before the Magistrate at Nadi on 29 January 2024.
26. The Counsel for 5th Accused in his submission cited State v Naivalurua¹⁶ in support of his argument that the caution interview of the 5th Accused should be excluded because it was taken in violation of Section 13(1)(f) of the Constitution. In Naivalurua, Goundar J [26] observed:

The constitutional protection accorded by section 13(1)(f) is plain and unambiguous. A person arrested or detained must be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest. If the purpose of the 48 hours constitutional limit is to prevent the abuses and the excesses of a police state, then the courts function is to give effect to that purpose so that the right not to be detained without a charge for more than 48 hours can be fully realized. Any power having the capacity to undermine the 48-hour time limit needs a constitutional basis.

27. In that case, the court considered if the High Court had the power to make an order to expand the detention period of a suspect beyond 48 hours to allow the police to complete the criminal investigation. Although this Ruling in Naivalurua does not directly address the issue at hand in the present case as the intervention of a court had not been sought to expand the 48-hour detention time, it is appropriate to express my opinion in this regard.
28. In Naivalurua the High Court took a different opinion from that taken by Rajasinghe J in State v Dhamendra¹⁷ where it was held that the High Court has the power to expand the detention period beyond 48 hours without a charge. Goundar J thought Rajasinghe J's opinion formed mere obiter as there was no express statutory or constitutional power to detain a person for more than 48 hours without a charge. Goundar J observed at [23]:

The case of Dharemendra has decided that there is no express statutory or constitutional power to detain a person for more than 48 hours without a charge, and therefore, the

¹⁶[2020] FJHC 306; HAM075.2020 (8 May 2020)

¹⁷ [2016] FJHC 386; HAM58.2016 (10 May 2016)

learned judge's opinion that such jurisdiction existed with the High Court only is strictly obiter as the Court was not required to consider the issue of the High Court having such power.

29. However, Section 13(1)(g) of the Constitution provides a constitutional basis suggesting that an arrested person can be detained without a charge if he or she is informed at his or her first appearance in court of the reasons for the detention to continue. The section states:

Every person who is arrested or detained has the right at the first court appearance, to be charged **or informed of the reasons for the detention to continue**, or to be released.
[Emphasis added]

30. In view of this section, one can argue that the magistrate court before whom a suspect is first produced has the power to expand the detention period beyond 48 hours upon the suspect being informed of the reasons for the detention to continue although that power is not expressly conferred by the 2013 Constitution. [1970 and 1990 Constitutions had expressly given this power to court]. This argument can be supported on the basis that the purpose of this section is to bring all the arrested persons under judicial supervision as soon as possible to protect his/ her rights while allowing the investigators in appropriate cases to complete their investigation.
31. The drafters of the 2013 Constitution in their wisdom appear to have appreciated the difficulty in giving full effect to the 48-hour cap placed on detention in exceptional situations where the investigation is too complex for easy management because of the standards and facilities in the Fiji Police Force or where bringing a suspect to court within 48 hours is not practically possible in the Fijian context. In this case, the frustration and dilemma on the part of the police investigators are evident in the evidence of how the 5th and 8th Accused were arrested, released and re-arrested several times before they were produced in court.
32. A careful reading of Section 13(1)(f) of the Constitution informs that if it is not reasonably possible to bring a suspect before a court within 48 hours after arrest, the right the section intends to protect would not be breached if he/she is brought before court as soon as possible thereafter. Therefore, the section requires the State to meet the 'reasonableness test' to justify the delay if it failed to produce a suspect before a court within 48 hours.

33. In Noa Maya v State¹⁸ the Supreme Court said the following:

....Secondly, the right to be brought before a court within 48 hours of one's arrest is not an absolute one. If it is not reasonably possible to do so, he may be brought before a court as soon as possible thereafter.

34. In State v Raitekiteki¹⁹ the High Court held the caution interview inadmissible because there was no proper justification for failing to produce the accused within 48 hours. The Court observed at [8]:

The mere fact that an accused was kept in police custody for more than 48 hours itself may not affect the voluntariness of a confession made by an accused. (Maya v State [2015] FJCA 19; AAU0053.2011; (27 February 2015). However in this case, there was no proper justification for failing to produce the accused within 48 hours.

35. Therefore, the proper question to be asked is whether there had been any link between the length of time the suspect had been detained for and the making of the confession. For example, if the court finds the long detention to be so oppressive that it was sufficient to undermine the free will of the suspect, a confessional statement would be excluded.

36. In Noa Maya v State (*supra*) the Supreme Court further observed:

In addition, Maya repeated an argument which the Court of Appeal rejected based on the fact that he had not been brought before a court within 48 hours of his arrest in breach of his constitutional rights. The problem with this argument is twofold. **First, the trial judge did not find that there had been any link between the length of time Maya had been detained for and the making of the confession. Secondly, the right to be brought before a court within 48 hours of one's arrest is not an absolute one. If it is not reasonably possible to do so, he may be brought before a court as soon as possible thereafter.** (Emphasis added).

37. IP Simone (PW22), who was the operation commander of the overall investigation of this case. Therefore, his evidence is relevant to the ground raised by each Accused on the basis that his/her right to be brought before a court within 48 hours of arrest was violated. IP Simone explained why the suspects were detained in police custody exceeding 48 hour-limit. He explained the complexity of the drug operation involving 4.1 tons of drugs and the

¹⁸ [2015] FJCA 19; AAU0053.2011; (27 February 2015)

¹⁹ HAC 285 of 2015 (17 November 2016)

difficulties under which the investigation was run. They had not handled a hard drug case of this magnitude in Fiji previously. IP Simone said that, at the initial stages, they had to arrest more than 20 suspects including businessmen, and it took time for them to obtain and execute search warrants to uplift information from the Registrar of Companies and banks and to get financial background of the suspects to investigate the link of drugs to money-laundering. They had to record witness statements from more than 40 police officers and conduct interviews of each suspect. The investigation was still ongoing when the interviews were in progress; the suspects were at large and not arrested one time; arrests took place one after the other as the information flowed in. They had to ensure the safety of the officers, safety of the suspects and their families and the drugs.

38. The 1st, 3rd and 6th Accused had been arrested from a no-man island called Cobia off Taveuni. Sgt Tomasi Tomu described the circumstances under which these three Accused were arrested and transported from Cobia Island to Nadi Police Station spending almost two days. The long and difficult travel by sea and road was explained in detail. By the time the interviews of these three Accused started, 48 hour time limit had already elapsed. Bearing this evidence in mind, I will further examine each accused's situation separately in my analysis.

Oppression

39. Oppression is alleged by almost all the Accused as one of the grounds they say that undermined their free will. The test is whether the accused confessed because he/she was placed under circumstances that undermined or weakened the exercise of his/her free will²⁰. What constitutes oppression in the Judges Rules that prevents a confession being treated as having been made voluntarily was defined by Sach J. in *R v. Priestley*²¹ as follows: -

The word... imparts something which tends to sap and has sapped that free will which must exist before a confession is voluntary ... whether or not there is oppression in an individual case depends upon many elements ... they include such things as the length of time of any individual period of question, the length of time intervening between the periods of questioning, whether the accused person has been given proper refreshment or not, and the characteristic of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds that the accused

²⁰ State v Valevesi [2014] FJHC 505 (9 July 2014); R v Prestley [1965] 51 CR .App.R

²¹ (1965) 51 Cr App. R1

person is of a tough character and an experienced man of the world."

40. Bearing in mind the legal principles discussed above, I now turn to the grounds raised by the Accused to find facts in this case and make appropriate orders.

Ruling on the Voir Dire Hearing for Sakiusa Tuva (The 5th Accused)

Grounds of Voir Dire for the 5th Accused

- I. On 14th January 2024 at around 2.30pm, 4 Police Officers arrested Mr. Tuva at Martintar, Nadi and took him inside the police vehicle and began to forcefully ask the Accused questions without cautioning and/or informing the Accused of his rights of an arrested and detained person. Whilst the Accused was seated inside the police vehicle, the police officers punched him and threatened him that they will beat him up if he does not answer their questions.
- II. The Police Officers took Mr. Tuva to Hexagon Hotel, Nadi and took him inside his room and began to forcefully ask him questions without cautioning and/or informing Mr. Tuva of his rights as an arrested and detained person.
- III. Mr. Tuva was detained in the police custody beyond 48 hours. He was kept in the police custody for 14 days from the period 14 to 28 January 2024. His wife, children, girlfriend and family were brought to the station as a form of torture by police to have Mr. Tuva admit the allegations.
- IV. At the time of the Record of Interview from the period 15 to 28 January 2024, the Interviewing Officer D/CPL4202 Timoci Tavurunaqiwa and Witnessing Officer IP Simione told the Accused that "you tell us the truth you won't be charged," "If you tell the truth, and help them you can go home and take the kids to school" and "If you help them your wife will be released". The Caution Interviewing Officer D/CP 4202 Timoci Tavurunaqiwa and Witnessing Officer IP Simone gave false promises to the Accused and proceeded with the interview without informing Mr. Tuva the allegations and nature of the caution.
- V. Mr. Tuva was not afforded the first hour procedure by the Namaka Police Station despite asking for a lawyer. The Officers proceeded with the interview despite Mr. Tuva's request for a legal practitioner to be present which was unfair.
- VI. The Police officers had not properly cautioned Mr. Tuva after suspension and recommencement of the interview. Further, Mr. Tuva was not cautioned before or after the reconstructions.
- VII. Mr. Tuva could no longer take the oppressive environment and in an attempt to save his family which includes his wife, children, parents and girlfriend who were all at the station from any risk of being charged he agreed to the suggestions by the officers.

Analysis/Evaluation

Arrest of Tuva

41. Altogether four police officers of the arresting team including the team leader IP Simone and the arresting officer DC Tevita Rika presented evidence. The police officers gave consistent evidence as to the circumstances of the arrest. DC Rika said that he revealed his identity and cautioned Tuva in terms of Judge's Rule No.2 and explained the reason for arrest. Tuva cooperated and agreed to come with them. No officer in the arresting team used any form of violence or abuse on Tuva. Tuva was not threatened, nor was given false promises, coerced or ill-treated. Tuva did not complain of anything. He denied all the allegations that Tuva had raised in his grounds of *voir dire*. Tuva did not request for any lawyer when his right was put to him during the first hour of the arrest.
42. Tuva said that someone in civilian clothes approached and inquired his name and when he revealed his name, he was accompanied to a vehicle. It is not disputed that the police officers were not in their uniforms and their vehicle unmarked. It is not unusual for the police detectives to be in civilian clothes in doing undercover operations. The fact that Tuva agreed to go with them without protest suggests that Tuva knew he was getting arrested by police officers. No prejudice was caused to the suspect because the police officers were in civilian clothes.
43. Tuva alleges that the officers, without cautioning him, started questioning in the vehicle and one officer hit his left rib forcing him to answer the questions. Tuva said that he cooperated with the officers and answered the questions because he was scared that they would harm him. He further said that the officers took him to Hexagon Hotel and, showing some photos, the questioning continued without cautioning him.
44. However, Tuva agreed under cross-examination that he was not sworn at, threatened or ill-treated by any officer. Interviewing Officer Sgt Timoci confirmed that Tuva raised no complaints to him or IP Simi regarding any issue relating to his arrest or detention in police custody.

45. Tuva's charge statement (5DE1) shows that he was afforded an opportunity to complain to the charging officer. If an officer had hit Tuva's ribs forcing him to answer the questions, he could have complained to the charging officer. However, Tuva had complained only about the long detention and the search. He made no complaint that he was assaulted or forced to answer questions. He had not complained to the interviewer or his lawyer Mr Niudamu who visited him at the police station. Despite being represented by a counsel, Tuva made no complaint to the magistrate or the judge when he was produced in Court.
46. Tuva agreed that the officers took him to Hexagon Hotel to collect his items and that he was allowed to give money to his girlfriend. Sgt Koli confirmed that the officers from the Narcotics Dpt. came to meet IP Simi and that they never entered the hotel room. I accept that Tuva was not forced or questioned in the vehicle or at Hexagon.
47. The Prosecution does not seek to tender in evidence any statement Tuva allegedly made during his arrest. Therefore, the conduct of the arresting officers would only be relevant if it had influenced the voluntariness or fairness of the interview that followed. I am satisfied that the arresting process is fair and it did not affect the voluntariness of the suspect at his interview.

The first hour procedure

48. The Defence alleged that the first hour procedure was not afforded to Tuva before the interview started. DC Rika denied that he had not informed the suspect about the first hour procedure. He said Tuva did not wish to see a lawyer. However, he agreed that the first-hour procedure had to be afforded whether the suspect requested it or not. Sgt Koli and IP Simi confirmed that Tuva was afforded this procedure. According to Sgt Koli, Tuva had stated that he was exhausted for the day, and a lawyer could be contacted the next day. IP Simione said that the police officers are not bound to follow this procedure which is only a matter of policy.
49. I agree with the Defence that the first hour procedure is a good practice that serves a useful purpose in preventing police brutality and bolstering the transparency of the interview process. However, the mere fact that the first hour procedure was not complied with does

not render a caution statement inadmissible if the suspect was not prejudiced thereby. Therefore, the Court must proceed to inquire if Tuva was prejudiced by this procedural deficiency at his caution interview.

Interview of Sakiusa Tuva

50. Sgt Timoci who conducted the interview said that before the interview started Tuva was properly cautioned, explained the reason for his arrest and other constitutional rights guaranteed to a suspect under Section 13 of the Constitution. The witnessing officer IP Simi confirmed Sgt Timoci's evidence. The interview notes indicate that Tuva was properly cautioned and his rights explained. Tuva had signed to acknowledge that he was given, and he understood those rights. I have no reason to reject Sgt Timoci's evidence.
51. It is alleged that despite his request, Tuva was not given an opportunity to consult a lawyer before the interview commenced. It is also alleged that Sgt Timoci continued with the interview disregarding Tuva's indication that he did not fully understand the caution. Tuva agreed that the interview was suspended when the request was made, and a call was made requesting a lawyer. The call had been made to Tuva's boss Lo. DC Rika said that he proceeded with the interview because at Q11 Tuva did not wish to exercise any of his rights including the right to counsel and legal aid.
52. The Court could understand the dilemma the interviewer would have faced in meeting the time constraints when called upon to wait for a lawyer whose presence was yet to be verified. Tuva's lawyer Mr Niudamu had visited Tuva when the interview was still in progress on 26th. The interview notes show that, at the beginning of the interview, Tuva was cautioned in simple English in terms of Judge's Rule No.2. IP Simione described Tuva as an intelligent person. Tuva had received primary, secondary and tertiary education in English language. He had signed the record to acknowledge that he understood the caution put to him. It is unbelievable that Tuva could not fully understand the caution put to him. I am not convinced that Tuva was prejudiced even if had had no opportunity to consult a legal practitioner at the beginning of the interview.

53. The interview record shows that Tuva's girlfriend, wife and other family members had visited him during the interview. There is no plausible evidence that his wife was arrested, or his family members were forced to convince Tuva to admit to the allegation. There is no plausible evidence that Tuva made admissions because he had received false promises or that he was tricked. No complaint had been lodged by Tuva or his family members that his family members were arrested, forced or given promises. Tuva's evidence in this regard should be rejected.
54. Sgt Timoci referred to all the suspensions of the interview to show that Tuva had been cautioned upon each resumption. He agreed that on few occasions, Tuva was not fully cautioned but only reminded that he was under caution. He also said that before going for scene reconstructions, Tuva was cautioned, although this fact is not recorded in the interview notes. The reason for this he said they had not taken the laptop with them to the scene. I have no evidence to conclude that Tuva did answer the questions without knowing the consequences of not remaining silent. In any event, since the Prosecution is not relying on any statements Tuva allegedly made during scene reconstructions. Therefore, Tuva would not be prejudiced at his trial even if the caution had not been put immediately before reconstructions.
55. DC Timoci agreed that as per the Fiji Police Force Standing Orders a suspect had to be produced before the most senior officer or the supervising officer for him to be given the opportunity to lodge a complaint, when the suspect had made admissions in the caution interview. However, no prejudice was caused to Tuva as he got an opportunity to complain to the charging officer soon after the interview was concluded.
56. Tuva alleges that he was detained for more than 14 days before being produced in Court in breach of the Constitution. The officers do not deny that Tuva was first arrested on 14 January 2024 and produced in Court on 29 January 2024. Sgt Timoci and IP Simi explained what caused the delay. To avoid 48-hour limitation on police detention, the officers had nominally released Tuva only to be re-arrested after a few minutes.
57. DC Timoci agreed that Tuva was released from the 3rd level of the Nadi Police Station where the interview was conducted and re-arrested at the reception and taken back to be

interviewed. The inconsistencies between the station diary entries and the interview notes as to the release of the suspect suggest that Tuva was not effectively released from police custody after he was arrested on 14th January 2024.

58. Although Tuva was technically released for few minutes, no one can deny that he had been in effective police custody until he was produced before court on 29th. This type of nominal releases would not absolve the police conduct the Section 13(1)(f) of the Constitution intends to prevent and should not be seen as a way to bypass the envisioned constitutional protection.
59. However, since this right is not absolute, what matters to Court for the purpose of this inquiry is whether the long police detention was justified in the circumstances and prejudicial to the suspect. If the Court finds for instance that Tuva was oppressed during the long detention in such way as to deprive him of his free will, it would not be fair to allow the interviews to be admitted as evidence at trial proper. I find no such evidence in this case.
60. Explaining why the suspect was kept in police custody for more than 48hrs, Sgt Timoci said that this was the largest ever drug case across the South Pacific involving a complex investigation where information was still coming in and the police were still ascertaining the facts when the interview was still in progress; Tuva was the first to be arrested and the rest were still at large. IP Simone said it's a complex drug seizure and the police were justified in keeping Tuva for more than 48 hours since the main suspect was still at large; Tuva's detention was required to ensure Tuva's safety and security as his family had seen unknown vehicles approaching their house. In these circumstances, the long detention is justified.
61. The interview took place over two weeks where, on each day, Tuva was interviewed at least for few minutes allowing adequate time for him to rest. During this period, Tuva had been taken for scene reconstructions and searches had been conducted in various places as new information emerged and the drugs had been escorted for safe keeping. I am satisfied that the police were justified in keeping Tuva for more than 48 hours in the interest of justice.
62. Tuva started making admissions from day one of the interview. The evidence does not establish any link between his long detention and the admissions he made. During the interview, the interviewing officers had not received any complaint from Tuva that he was

unfit or uncomfortable to be interviewed. Adequate food, time for rest and opportunity to see his family has been provided. I am satisfied that Tuva was treated well, and his long police detention was not oppressive so as to deprive him of his free will. There is no evidence that Tuva was softened for him to make admissions during police detention.

Ruling on the Voir Dire Hearing for – Cathy Tuirabe
(The 8th Accused)

Grounds of Voir Dire for the 8th Accused

- I. On 18th January, 2024, 4 Police Officers arrested the Accused from home in Low Cost Votualevu, Nadi and took the Accused to the cassava patch near her house and began to forcefully ask the Accused questions without cautioning and/or informing the Accused of her rights of an arrested and detained person. The Arresting Officers threatened the Accused and said that “if you are not going to help us in giving information, you will be thrown into prison for life”.
- II. Before the interview commenced on 18th January 2024, D/Cpl 3795 Virisila Rakadi and D/Cpl 3606 Nacanieli gave false promises to the Accused and said “to think hard for yourself and help us by giving information, and we won’t file any case against you”.
- III. The Accused was interviewed from 18th January 2024 till 23rd January 2024. The Accused was not cautioned about the consequences of not remaining silent but was told by D/Cpl 3795 Virisila Rakadi and D/Cpl 3606 Nacanieli “to think hard for yourself and help us by giving information, and we won’t file any case against you”.
- IV. The Accused was detained in the police custody beyond 48 hours. The Accused was kept in the police custody for 9 days from the period 18 to 27 January 2024 she was released on 27th January 2024 and arrested again on 28th January 2024 at 10am from her home. She was charged at 6pm was not provided with any meal on 28th January 2024 from time of arrest till 11pm.

Analysis

Arrest of Cathy

63. Three police officers who participated in Cathy’s arrest gave evidence including the team leader PC Kameli and the arresting officer WDC Mereosi. They gave consistent evidence and denied the allegations raised by Cathy in her grounds. It is not disputed that PC Kameli

is closely related to Cathy. It is hard to believe that Cathy was threatened by the officers in her uncle's presence.

64. PW7 WDC Mereosi described how Cathy was arrested after cautioning and explaining her the reason for arrest. The officers do not deny that Cathy was taken to a ground near a cassava patch. However, they deny that Cathy was questioned and threatened to send her to prison if she did not cooperate. They maintained that Cathy wanted to smoke and talk to them, and that's why they took to Cathy to a nearby park where Cathy wanted to tell her story.
65. Even though there was no mention of Cathy wanting to have a conversation or speaking about Justin Ho and his group in their witness statements, this omission is not material as the Prosecution is not relying on any statement Cathy allegedly made during her arrest.
66. Cathy never said in her evidence that the officers threatened her that she would be sent to prison if she did not cooperate. She admitted that she already knew that the house at Legalega had been raided with drugs and that's why the police officers had come to arrest her. There is no plausible evidence that Cathy was questioned at the cassava patch or threatened after her arrest.

Interview of Cathy

67. PW8 Cpl Virisila, who interviewed Cathy with Cpl Nacanieli testified and were consistent in their evidence. They received no complaints from Cathy about anything. Referring to the interview notes, the police witnesses confirmed that Cathy was cautioned and explained the allegation against her, her constitutional rights, including the consequences of not remaining silent (at Q &A 18 &19) which she understood. Cathy had exercised her first hour and spoken to a Legal Aid Lawyer. There is no plausible evidence that Cathy was coerced or given false promises/inducements for her to provide any answers at the interview.
68. There is no dispute that Cathy was first arrested on 18 January and that the interview took place over six days until 24 January 2024. According to police witnesses, Cathy had been

re-arrested on 28th to be charged and to be produced in court on 29 January 2024. According to them, Cathy was released thrice after arrest, namely on 20th 22nd and 24th within this period and re-arrested because the interview could not be completed within 48 hours.

69. The right to be brought before court within 48 hours is not absolute. What matters to Court for the purpose of this inquiry is whether the long police detention was justified in the circumstances of the case and whether it was prejudicial to the suspect. The officers gave reasons for keeping the suspect beyond 48 hours. The reasons justify the delay in producing her in Court. The interview notes show that Cathy was interviewed over six days, although the full time available had not been utilized, for legitimate reasons.
70. Cathy started making admissions from day one of the interview. The evidence does not establish any link between the long detention and the admissions she made. During the interview, the interviewing officers had not received any complaint from Cathy that she was unfit or uncomfortable to be interviewed. Adequate food, time for rest and opportunity to see his family has been provided. I am satisfied that Cathy was treated well, and her long police detention was not oppressive. There is no evidence that Cathy was softened for her to make admissions during police detention.

Voir Dire Ruling for the 1st Accused Justin Ho Steven Mashi Ho the 3rd Accused Louie Frank Penijamini Logaivau and the 6th Accused Jale Aukerea

The Grounds of *Voir Dire* for 1st and 3rd Accused

- I. That 1st and 3rd Named Accused were not explained in the language they understand the reason of arrest at the time of arrest.
- II. The 1st and 3rd Named Accused were not explained in the language they understands the right of remaining silent and the consequence of not remaining silent at the time of arrest.
- III. That the 1st and 3rd Named Accused were taken without prior notification that their caution interview would be taken, which interview was taken a few months after the alleged incident.
- IV. That the 1st and 3rd Named Accused were kept in police custody for more than 48 hours before they were produced in Court.
- V. The 1st and 3rd Named Accused were not informed in the language they understand the right to communicate to a solicitor of their choice at the time of arrest.

- VI. The 1st and 3rd Named Accused although were granted their rights to consult their solicitors, did show but after they had advised the interviewer that they would remain silent despite this fact they were forced to continue their interview;
- VII. That the 1st and 3rd Named Accused were not in the right state of mind, when caution interview was conducted.
- VIII. The 1st and 3rd Accused were systematically softened during the interview in that they were kept in custody in circumstances which was degrading and inhumane;
- IX. The confession in the Caution Interview was obtained in the circumstances that were unfair to the 1st and 3rd Accused as they had not accorded their rights pursuant to Section 13(1) of the Constitution of Fiji.

Section 13 – (1) Every person who is arrested or detained has the right –

- (a) To be informed promptly, in a language that he or she understands, of-
 - (i) The reason for the arrest or detention and the nature of any charge that may be brought against that person;
 - (ii) The right to remain silent; and
 - (iii) The consequences of not remaining silent;
 - (b) To remain silent;
 - (c) to communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;
 - (d) not to be compelled to make any confession or admission that could be used in evidence against that person.
- X That the statements were obtained in circumstances that were oppressive;
 - XI That the caution interview was obtained by deception.
 - XIII That the 1st and 3rd Accused were cross-examined during the caution interview which was contrary to law.

The Grounds of Voir Dire for the Jale Aukerea (6th Accused)

- I. That the 6th Accused was not explained in the language they understand the reason for arrest at the time of arrest.

- II. The 6th Accused was not explained in the language he understood the right of remaining silent and the consequence of not remaining silent at the time of arrest.
- III. That the 6th Named Accused were taken without prior notification that their caution interview would be taken, which interview was taken after the 48 hours timeline of the alleged incident, when the 6th Accused was emotionally disturbed, stressed and restless. This arose in Ba Police Station cell block, where it was inhuman for habitation as it contained a leaked ceiling, hole on the walls and free air condition access from the winds.
- IV. The 6th Accused were kept in police custody from the 23rd to the 29th January 2024 in various Police Stations and cell blocks, ranging from Ba, Lautoka and Nadi respectively. A continuous period exceeding 48 hours prior to being produced in Court.
- V. The 6th Accused were not informed in the language he understood the right to communicate to a Solicitor of his choice at the material time of arrest.
- VI. The 6th Accused although were granted their right to consult their Solicitor, did show but after they had advised the interviewer that they would remain silent despite the fact they were forced to continue their interview.
- VII. That the 6th Accused were not in the right state of mind, when a caution interview was conducted.
- VIII. The 6th Accused was systematically softened during the interview in that they were kept in custody in circumstances which were degrading and inhumane.
- IX. The confession in the Caution Interview was obtained in the circumstances that were unfair to the 6th Accused as they had not accorded their right pursuant to Section 13(1) of the 2013 Constitution of Fiji;
 - (a) To be informed promptly, in a language that he fully understands of,
 - (i) The reason for the arrest or detention and the nature of any charge that may be brought against that person;
 - (ii) The right to remain silent; and
 - (iii) The consequences of not remaining silent;
 - (b) To remain silent;
 - (c) To communicate with a legal practitioner of his or her own choice in private the place where he or she is detained, to be informed of that right promptly and, if he or she doesn't have sufficient means to engage a legal practitioner and the interest of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;
 - (d) not to be compelled to make a confession or admission that could be used in evidence against that person.
- X. That the statements were obtained in circumstances that were oppressive.
- XI. That the caution interview was obtained by deception.

- XII. That the 6th Accused were cross examined during the caution interview which was contrary to law.

Circumstances of the Arrests of 1st Accused Justin Ho, 3rd Accused - Louie Logaivau and 6th Accused - Jale Aukerea

71. The 1st Accused, Justin Ho, the 3rd Accused Louie Logaivau and the 6th Accused Jale Aukerea were all arrested together at Cobia Island and brought down to Nadi. The grounds filed by these three Accused mount almost a similar challenge to the circumstances under which they were arrested, their detention and the interviews. Therefore, it is convenient for the Court to discuss the evidence relating to them together. Only the 6th Accused presented evidence while the 1st and the 3rd Accused exercised their right to silence. Of course, the Accused have no burden to present evidence or prove anything. As I said before, the burden is squarely on the Prosecution. However, their election not to give evidence themselves meant that there was no evidence from them to undermine or contradict the accounts given by the police²².
72. Altogether four police officers of the arresting team led by Sgt Tomasi Tomu (PW10) testified as to the arrest and transport of these three suspects from Cobia Island to Nadi. According to them, the suspects were arrested at around 6.15 am on 23 January 2024. Upon their arrest, Sgt Tomasi in the presence of the other suspects cautioned Justin Ho and informed him about his rights and the reason for his arrest. The suspects were not threatened or intimidated. Although a detailed account of the arrest is not reflected in Sgt Tomasi's witness statement, other police witnesses who arrested Jale (PC Sepeti) and Louie (PC Metui) confirmed the evidence of Sgt Tomasi that the suspects were cautioned and reason for arrest were explained.
73. The station diaries of Taveuni and Seaqaqa Police Stations confirm Sgt Tomasi's evidence that the suspects were given food. An opportunity to call a Legal Aid or a private lawyer had been accorded at the Taveuni police station. The fact that Justin Ho contacted his private lawyer, Mr Iqbal Khan, as noted down in the station diary, confirm that all the suspects were afforded that right at the Taveuni Police Station. The fact that the suspects

²² Noa Maya v State [2015] FJCA 19; AAU0053.2011; (27 February 2015)

made no complaints to the police officers, their lawyers or to the courts suggests that the suspects were treated well after they were arrested.

74. The evidence of Jale is implausible. None of the suspects alleged in their grounds that they were arrested for trespassing or stripped naked at Taveuni Police Station to be photographed. His evidence that the suspects were not provided any meal for three days is highly implausible. It is implausible that they had gone to Cobia for camping without any camping stuff. I accept the evidence of the police witnesses and reject that of Jale.

Caution Interviews

The interview of Jale Aukerea (6th Accused)

75. DC Atama and Sgt Koli who conducted the caution interview of Jale Aukerea from 25-28 testified and presented consistent evidence. They confirmed that Jale was properly cautioned and his rights were explained and understood. The interview notes confirm that Jale was afforded his rights each day of the interview. Jale had signed to acknowledge that he was given all his rights. Jale had the capacity to understand everything as he had received good education in Australia. He testified in fluent English. The fact that Jale exercised his right to remain silent towards the end of the interview confirm that he understood his rights and enjoyed his freedom.
76. DC Atama confirmed that Jale did not appear stressed. It is natural that Jale looked tired after a long travel from Cobia Island. However, Jale was fit and he had never complained that he was not well or distressed. The 48-hour period had already elapsed from his arrest when the interview started. The delay was inevitable given the long travel by sea and road from Cobia Island off Taveuni. Jale had slept overnight at the police station and had enough time to rest before the interview started at 2:30 pm on the 25th. During the interview, Jale was afforded the right to consult a solicitor from Legal Aid.
77. There is no dispute that Jale was in police custody for seven days before being produced before the Magistrate on the 29th and was interviewed for four days. The long travel had already consumed two days. During the interview, searches and scene reconstructions had

been conducted while allowing the suspect adequate time to rest. Sgt Koli said the case was so serious that it involved not grams but tones of illicit drugs.

78. The meals and adequate breaks had been provided. There is no plausible evidence that the condition of the cell was inhumane or degrading. IP Simi who was familiar with Nadi Police Station described the Nadi Police Station as an air conditioned state of art newly built police station. The 2nd Accused Heritage who was also kept at Nadi cell agreed that the taps were fully functional.
79. I am not convinced that Jale was oppressed or softened. He had exercised his right to silence towards the end of the interview and made no complaint to anyone including courts despite being represented by a counsel. I find no link between the long detention and the admissions Jale made in his interview. There is no plausible evidence that Jale was given false promises or tricked for him to make admissions.

The interview of Louie Frank Penijamini Logaivau (3rd Accused)

80. ASP Waqa (PW17) testified to the video recorded interview of Louie that he had conducted from 25 -28 January 2024. According to him, the 48-hour period had already elapsed since Louie's arrest when the interview commenced. After the long travel, Louie had slept overnight in Lautoka cell and had adequate time to rest when the interview commenced at 3.30 pm on the 25th. Although Louie looked a bit fatigued from travel, he was normal, healthy and fit to be interviewed. Louie was not forced, oppressed or ill-treated. Nor was he given any promise. Louie had not complained of his arrest, condition of his detention or of police ill-treatments.
81. The interview notes confirm ASP Waqa's evidence that Louie was properly cautioned, explained the allegation and his rights under Section 13 of the Constitution were given. Louie acknowledged by signing that he was given those rights that he understood. Louie had received his high school education from Natabua High School up to Year 13 in English and was capable of understanding his rights. Louie acknowledged the consultation he had with his counsel Mr. Iqbal Khan before the interview. There is nothing before this Court to

reject ASP Waqa's evidence. His evidence is credible and believable. Defence presented no evidence to discredit his version. I accept ASP Waqa's evidence.

82. Louie was in police custody for seven days and interviewed for four days. The long travel had already consumed two days when the interview started on 25 January 2024. ASP Waqa admitted that Louie's interview was confined to short periods each day and that the detention time was not fully utilized for the interview despite the 48-hour-period had already elapsed. He gave reasons for the snail's progress of the interview. On the first day (25th), they had waited a long time for Mr. Iqbal Khan to come to the station. On the second day (26th), the interview was confined to less than an hour because the investigation was still ongoing in full force, keeping them waiting for the investigators to complete their inquiries so that the interview could be moved forward. On the third day (27th), because of the information received, they had to obtain a search warrant and a search was conducted at Denarau where Louie resided. On 28 January 2024, the interview got delayed because ASP Waqa was liaising with the investigation team regarding the things they were bringing in and the officers were trying to put together everything as quickly as they could to cover them up in the interview.
83. Louie's detention beyond 48 hours is justified. Since it was not reasonably possible for Louie to be produced within 48 hours of his arrest, he was brought before a court as soon as possible thereafter. The right guaranteed under Section 13(1)(f) of the Constitution is not infringed.
84. There is nothing before this Court to suggest that Louie was detained in oppressive circumstances that made him compromise his free will. ASP Waqa had inquired if Louie was fit and feeling well before the commencement of the interview each day, but he received no complaint. ASP was not aware if the meals were provided to Louie or not. That does not suggest that Louie was not provided with meals because ASP Waqa was not the officer responsible for providing meals to the suspects. Since the station diaries and meal books had been disclosed, the Defence Counsel could have put his version to the witness if Louie had been denied meals during the interview. There is no specific allegation in the grounds that Louie was not provided with meals. Louie had the opportunity to change his clothes as he had picked some clothes when they went for the search at his address on the

27 January. I am satisfied that Louie was not prejudiced even if his Section 13(1)(f) right had been violated.

85. In view of the Lautoka PS SD entry that '*I.P. Waqa and the team left and said one Louie should not have any visitors,*' it was suggested that Louie was denied family visitations. Obviously, this entry was not put by ASP Waqa himself. He explained what this entry meant for him in terms of the direction he had given. It was for the police officers to prevent interferences.
86. Louie had only answered the background questions and exercised his right to remain silent when he was questioned about the allegation until the last day of the interview. On the fourth day (28th), Louie provided information about his participation in the allegation and agreed to make a statement. The Defence contends that Louie changed his position and began to make admissions because he was influenced by a police officer the previous night.
87. There is nothing to support this contention. Before Louie made those admissions he had consulted his counsel Mr. Iqbal Khan on 27 January 2024 and he acknowledged at the interview that he understood the caution and his constitutional rights. When Louie started making admissions after three days of silence, ASP Waqa was surprised and inquired if anyone had forced, threatened or given a false inducement for Louie to answer. Louie replied in the negative. Louie further explained: *so this morning, I was in my cell block, and I needed time to rethink about everything and I've decided I will speak a little bit more today*'. Having said that Louie requested to '*make one statement*' and started making admissions. There is no basis for the suggestion that, by uttering the words '*make one statement*', Louie had intended to give a written statement. Louie made his intention clear when he said- '*I needed time to rethink about everything and I've decided I will speak a little bit more today*'.
88. Louie had informed ASP about the conversation he had had with a police officer the previous night, advising him about the case. I am not convinced that Louie started making admissions after being influenced by police or because of a promise they made. It appears that Louie started making admissions when he was shown a photograph of the truck that

was used to transport methamphetamine from Fantasy Island to Denarau. This photo had been obtained during the investigation.

89. ASP Waqa explained why the interview was suspended when Louie made those admissions. He said this suspension was to organize the next course of action and to prepare for a video recorded scene reconstruction that would follow.
90. I do not think the interrogation of Louie by Josevata, the assistant interrogator, from page five onwards, had in anyway prejudiced Louie. According to ASP Waqa, that is the practice normally adopted in video recorded caution interviews. The transparency of the process is guaranteed as everything that transpires at the interview is captured by CCTV cameras.
91. At the conclusion of the interview, Louie had complained about the ‘timings’ of the interview but did not elaborate on this issue despite an opportunity was given to explain. Louie had not made any complaint thereafter to anybody including the courts despite being represented by a counsel. I am sure the interview was conducted fairly and the admissions were given voluntarily.

The interview of Justin Ho

92. From 25 -28 January 2024, Sgt Temesi Saladuadua (PW18) conducted the video recorded interview of Justin Ho under caution. He was assisted by IP Suliasi Dulaki on the 25th, and Corporal Suliano Tevita from the 26th to the 28th.
93. Sgt Temesi gave consistent evidence. According to him, the 48-hour period had already elapsed when the interview commenced. After the long travel, Justin Ho had slept overnight at the Ba Police Station. He was allowed adequate time to rest until the interview commenced at 3.22 pm. At the commencement, Justin Ho said he was fit to be interviewed. He did not look distressed or emotionally unstable. Justin Ho did not complain that he was tired or of anything that happened during the arrest, transport or condition of detention or of police ill treatments.

94. Justin Ho was cautioned, explained the allegations against him and his other rights under Section 13 of the Constitution which he acknowledged to have understood. He took 8 minutes and 39 seconds to read Section 13 of the Constitution. He exercised his right to remain silent on the first two days of the interview. Justin Ho was asked if he needed to consult a counsel of his choice or a counsel from the LAC. Before the interview, he had already consulted Mr Iqbal Khan. He acknowledged that the rights explained to him will remain in force during the interview. Justin Ho was not forced, oppressed or ill-treated. Nor was he given any promise.
95. The interview notes confirm Sgt Temesi's evidence that Justin Ho was properly afforded his rights under Section 13 of the Constitution. Sgt Temesi gave credible and reliable evidence. There is nothing for me to reject his evidence.
96. It is important to examine the circumstances under which Justin Ho started to make admissions. On 27 January 2024, during daytime, Justin Ho was at the Nadi Police Station where he consulted Mr Iqbal Khan. He also accompanied the police for a search at his residence which was done on a search warrant. The interview commenced for the day at 6.53 pm and the first session lasted 30 minutes until 7.23 pm and Justin Ho continued to remain silent. After a 10-minute break, the second session started at 7.33 pm and went on for 47 minutes till 8.20 pm where the questions were put regarding the property at Denarau where Justin Ho occupied, about one Sam (a Lebanese) giving him \$30,000 for him to go out into the sea to bring in the white drugs from the yacht. Justin Ho still remained silent. He broke silence for the first time when he was asked: *Is there somebody who is threatening you regarding this drug trade, Mr. Justin Ho?* To which Justin Ho replied in the affirmative. He provided information about his involvement with the drugs, about the owners of the drugs and the people who were threatening his and his family's life.
97. When Justin Ho started admitting to the allegation, he was asked if he wished to consult another lawyer. Justin Ho confirmed that the admissions came out of his own free will and that he was not threatened by any police officer to admit to the allegations. Justin Ho did not look distressed or emotionally affected at that point in time. There is no evidence that Justin Ho was deceived. On 28 January 2024, the interview commenced at 4.39 pm after

the video recorded reconstruction of the scene where Justin Ho showed the places he went, and the vehicles he used to transport drugs and his explanation why he had to do that.

98. It was contended that Justin Ho started making admissions because he was promised that his brother, Rudolph Ho James, who was already in custody, would be released without being charged, if he made admissions. Sgt Temesi denied this proposition and denied that Rudolf Ho James was used to deceive Justin Ho to obtain a confession. The fact that Justin Ho had not raised this issue in his grounds suggests that it was made up. It appears that Justin Ho started to admit when he realized the gamut of information the police had already gathered. Justin Ho was in fact putting forward his defence in his what is called a mixed statement. I am sure Justin Ho made the admissions on his own free will.
99. In page 38 of 59 in first session on 26th, Justin Ho was asked -*Why are you remaining silent, Mr. Justin Ho?* Because of this question, Defence argue that the interviewer was pressurizing Justin Ho to get him to confess. The interviewer should not have asked that question in the first place because Justin Ho was exercising his constitutional right. However, I do not think this question pressured Justin Ho to make admissions. Despite this question being put, Justin Ho had maintained his silence until the 27th.
100. There is no evidence that Justin Ho agreed to go for a scene reconstruction because of the promise that his brother would be released. There is no evidence that Justin Ho was oppressed or softened during his detention. Mr. Khan had never raised any complaint with the police after his visit to Justin Ho. I am satisfied that the interview was conducted in a fair manner and the admissions were made voluntarily.

Ruling on Voir Dire for the 2nd Accused - Davis Otto Heritage

Grounds of Voir Dire for 2nd Accused

- I. On 24th January 2024 10 Police Officers had arrested the Accused at his home in Sabeto, Nadi, placed him in the vehicle and began to ask him questions about the importation of drugs. Questions and comments were made without cautioning/or informing the Accused of his rights arrest as a detained person. Further, the Police men in an intimidating tone told the Accused that he needs to tell the truth for it is good for the long run.

- II. The Accused was kept in police custody for more than 48 hours before he was produced in court.
- III. The confession in the caution interview were obtained in the circumstances that were unfair to the Accused as he was not accorded his rights in accordance with Section 13(1) of the Constitution of Fiji.
- IV. The Police Officers had not properly cautioned Mr Heritage after suspension and recommencement of the interview. Nor was he cautioned before or after the reconstructions.
- V. The interviewing officers that had conducted the caution interview had asked irrelevant questions to further exhaust the accused, in order to be able to answer questions that are favourable to them.
- VI. The accused was systematically softened during the interview in that he was kept in custody in circumstance that was degrading and inhumane, whereby the cell he was placed in, had already been occupied by 3 suspects whereby one suspect had defecated on himself, only two cement beds, no mattress, no blankets. The filthy and unhygienic cell was not even cleaned the whole time he was kept in custody. The cell block was not in a livable state.
- VII. Mr. Heritage was not in a right state of mind when caution interview was conducted.
- VIII. Mr Heritage was not given sufficient rest, held in custody for more than 48 hours, worried of his family as he was the sole breadwinner, and being questioned more than 200 questions within an hour or two had made him more tired and mentally exhausted. As a result, Mr Heritage could no longer take the oppressive environment and agreed to the suggestions made by the officers.

Arrest of David Heritage

- 101. IP Simone was part of the eight-member arresting team that arrested David Heritage from his residence in Sabeto. The arrest was effected at about 11.00 pm on 24 January 2024. He introduced himself and explained the allegation and the purpose of his visit in the iTaukei language, which Heritage understood. Heritage voluntarily came to the police twin cab and was escorted to the Nadi PS. Heritage was never subjected to questioning or intimidation in the vehicle for him to admit to the allegations. He was the only person talking to Heritage. He did not ask Heritage *‘to tell the truth for his own good in the long run’*. Heritage was accorded the first hour which he exercised over the phone. Heritage admitted that he already knew what he was being arrested for. IP Simi’s evidence is credible and reliable. I find no truth in the allegation that the police officer sitting with him told in a harsh and intimidating manner that: *‘You should tell the truth and will help you in the long run’*. I accept his evidence to be the truth.

102. On 25 January 2024, Sgt Nacama (PW21) conducted the interview of David Heritage at the Nadi Police Station. Referring to the interview notes, he gave consistent and credible evidence as to what transpired at the interview. The interview starting from 2.20 pm on 25 January 2024 was fully video recorded. It was conducted in English, the preferred language of Heritage. Heritage did not complain about the circumstances of arrest, detention or of anything about the officers giving false promises. Heritage was cautioned and his rights as stipulated in Section 13 of the Constitution were afforded. Heritage acknowledged that he understood his rights. He further confirmed that he fully understood his rights explained over the phone by Ms Vaulina Lina, the lawyer from the LAC. The first day of the interview lasted till 3.43 pm for 1 hour and 20 minutes without any breaks. Right from the outset Heritage made admissions.

The Interview of Heritage

103. On the 26 January 2024, the first session of the interview resumed with Inspector Dulaki at 10.52 am until it was suspended at 12.08 pm. Heritage was calm, looked normal, and was very vocal during the interview. Heritage was cautioned and his rights explained. Heritage did not complain about his living condition of the cell at the Nadi Police Station. When the interview was suspended, Heritage willingly joined for scene reconstructions at his residence at Sabeto, and at his shop at Denarau. The reconstruction was video recorded. After the reconstruction, Heritage was cautioned when the interview resumed. It was ended at 9.15 pm. There were no breaks given because Heritage was comfortable. He did not complain of anything. At the end of the interview, Heritage confirmed that he gave answers voluntarily. He thanked the officers for their professionalism and giving him an opportunity to tell the truth. Sgt Nacama is consistent, credible and reliable. I have no reason to reject his evidence.
104. It is not disputed that Heritage had been detained for 15 hours prior to the interview which started at 2.20 pm on 25 January 2024. Since Heritage was arrested around midnight the previous day, the delayed start was not unreasonable as it allowed adequate time for Heritage to rest. During the first session, which lasted for 1 hour and 20 minutes, roughly 200 questions had been asked. Most of them were background questions, but, given the nature of the allegations, they were relevant and required short answers. On the 26th,

roughly about 620 questions had been asked in 1 hour and 15 minutes. The number appears too much but given that video recorded interviews consume less time compared to conversational ones which involve contemporaneous transcribing, this number is not excessive. In video recorded interviews, corroborator/ witnessing officers taking turns in asking questions is normal and accepted.

105. Heritage had been given sufficient breaks. He made no complaint as to the manner in which the interview was conducted or that he was exhausted. Therefore, there is no basis for the allegation that the police officers put too many questions in a short span and spent unjustified time on background questions to lengthen and further exhaust or soften the suspect.
106. Explaining the condition of the cell block at Nadi PS, IP Simi described the police station as a new state of the art building, equipped with air conditioners and cameras. Each cell had a washroom, own mattress and blankets. Heritage was given a two-bed cell and the cell blocks can accommodate more than five people.
107. Heritage said that the cell in which he was kept from 24th to the 28th was too cold, had only a cement bed, no pillows, blankets or mattresses; the toilet was filthy, smelling bad, no toilet papers and that he shared the 1st night with 4 occupants. However, Heritage said he never complained about the cell condition because he thought it was normal for prisoners in Fiji. He was frank to say that Fijians, like him were brought up that way and used to be lying down on the floor.
108. Heritage agreed that the Nadi Police Station is housed in a brand-new building which is air conditioned. He agreed that the cell was not overcrowded or congested although he shared it with 3 others. He agreed that the toilet and the sink were in working conditions. He agreed that he had acknowledged the professionalism of the police interviewers and that he did not raise any complaints at the conclusion of the interview or when produced before the courts through his lawyer Mr Nemani.
109. Heritage had never raised any issues about the condition of the cell or of any other issues with the police officers, the Magistrate or the Judge until he raised those in Court as his

grounds of *voir dire*. There is no plausible evidence that the condition of the cell was inhuman, degrading or overcrowded.

110. At the end of the last session, Heritage was asked whether he wished to change or alter any of his answers. Although there was nothing for the suspect to go through in a video recorded interview, Heritage had an opportunity to change his answers when the interviewer put the last question: *Do you want to say anything else apart from the things that he has informed the police over the last 3 days?*
111. Heritage was detained for more than 48 hours before being produced in court. The delay was not unreasonable in the circumstances which IP Simone described in his evidence. There is no evidence to establish a link between Heritage's lengthy detention and the admissions he made at the interview. The interview was fairly conducted although his detention exceeded 48 hours. Hence no prejudice was caused to him.
112. I am not convinced that Heritage made admissions because he was exhausted or not in a right state of mind or that he had been subjected to inhumane and degrading condition in the cell block for hours. He agreed that he gave the answers in the caution interview voluntarily. Each day, the interview was taken for little more than an hour. There is no dispute that the time of Heritage's detention was not fully utilized for the interview. However, a lots of activities going on at the same time at the police station and outside to bring the interview to a successful end. Heritage had spent most of the time in the cell when there were no scene reconstructions or the interviews. He did not complain that he was not fit to be interviewed. There is no evidence that Heritage was oppressed or softened during his detention. I am satisfied that the interview was conducted in a fair manner and that Heritage made the admissions voluntarily.

Conclusion

113. I am satisfied that the caution interview of each Accused had been conducted fairly, and affording constitutional rights. The Prosecution proved beyond a reasonable doubt that the admissions were made by each Accused voluntarily, and not as a result of oppression,

threats, assaults, trickery or inducements. I hold the caution interview of each Accused to be admissible in evidence at trial proper.




Aruna Aulthge
Judge

21 May 2025

At Lautoka

Solicitors :

- Office of the Director of Public Prosecution for State
- Iqbal Khan & Associates for 1st Accused
- Legal Aid Commission for 2nd, 5th & 8th Accused
- Millbrook Law for 3rd Accused
- Law Solutions for 6th Accused