

**IN THE HIGH COURT OF FIJI AT SUVA**  
**APPELLATE JURISDICTION**

CRIMINAL APPEAL CASE NO. HAA 09 of 2025

BETWEEN:

**JOSESE MASIREWA**

Appellant

AND:

**STATE**

Respondent

**Counsels:** Appellant in Person  
Mr. Lal, Unal D for the State

**Submissions:** 26<sup>th</sup> May, 2025 and 14<sup>th</sup> July, 2025

**Date of Ruling:** 27<sup>th</sup> August, 2025

**JUDGMENT**

1. Josese Masirewa, you were charged with one count of Robbery contrary to section 310(1)(a)(i) of the Crimes Act, 2009.
2. The appellant pleaded not guilty to the above charge. The case proceeded to trial on 26<sup>th</sup> September, 2024. The judgment was delivered on 18<sup>th</sup> October, 2024 whereby the Court finds the appellant guilty and convicted him accordingly.
3. On 13<sup>th</sup> November, 2024, the appellant was sentenced to 21 months imprisonment. However, since he was in custody for 6 months, he was to serve a custodial term of 15 months imprisonment.
4. This is an appeal against conviction only.

**Grounds of Appeal & Submissions**

5. By a letter dated 31<sup>st</sup> January, 2025, the appellant submitted his petition of appeal, the following grounds were outlined there:
  - (i) That the Learned Magistrate erred in law when she believed the prosecution witness number 2 to be truthful and reliable when he could not even recall which bus he made the identification which he said is more of a recognition;

- (ii) That in the absence of the complainant's evidence in respect of identification, there is no other witness to confirm that the appellant was in the bus at that material time;
  - (iii) That failure by the prosecution to bring the CCTV footage to be viewed in the open court has prejudiced the appellant as he had no opportunity to challenge the evidence presented against him;
  - (iv) That no explanation was offered by the prosecution as to why they will not disclose the CCTV footage in court.
6. The State as respondent through Mr. Unal Lal, who responded to above ground raised by the appellant in written submission filed in court on 14<sup>th</sup> July, 2025. The court found these submissions were very useful indeed.
  7. The court will review the entire judgment rendered by the learned Magistrate in considering the relevant issues raised.

### **Appeal Determination**

8. In this instant case, the main ground for appeal was that of the identification of the appellant in the dock and that of Prosecution witness number 2 who states that he was shown a CCTV footage of an I-taukei man whom he identified as the appellant.
9. Here, there is a need to '*examine closely the circumstances in which the identification by prosecution witness number 2 came to be made.*' This is a crucial requirement for consideration which was overlooked by the Learned Magistrate which raised the questions listed in ***R v Turnbull*** [1976] 3 All ER 549. The evidence before the court, the complainant states '*that she was travelling with her mother in a bus. Someone rung the bell to get off. As the bus was stuck in traffic, a person came from the back and snatched a chain she was wearing...The person was wearing black t-shirt, brown cargo shorts, flip flop and black cap. He was an I-taukei person and was of medium height...*'
10. The second prosecution witness states "*Around the time of the alleged incident he was based at Nabua Police Station. He was shown a CCTV footage of an I-Taukei person grabbing a necklace from a lady inside the bus and running away. He identified him as the accused person. He knows the accused as he was based with PMT for a year and he had known him to be a remandee from other matters. Dock identification of the accused done.*"
11. On the identification before the Court, prosecution witness number 2 did not personally identify the appellant as the person who snatched the chain from the complainant's neck. His evidence was solely based on an alleged CCTV footage that was shown to him at the Nabua Police Station whereby he identified the accused. In his evidence he did not describe as to what the accused was wearing at the time of the alleged offence. Neither did he describe the accused physical appearance. The Prosecution also did not tender the CCTV footage as exhibit in court.
12. In the Learned Magistrate's ruling, she accepted the evidence of the second prosecution witness whereby he said that it was via CCTV footage, that he identified the accused.


The learned magistrate had also effectively accepted that PW2's knowledge of Mr. Masirewa's as a known remandee from other matters whilst he was serving at PMT, was sufficient to draw the inference that accused committed the robbery in the bus. Had the magistrate's mind adverted to the **Turnbull** principles which was also approved by the Court of Appeal in **State v Wainiqolo** [2006] FJCA 70, the danger inherent in that pattern of thinking might have been, and should have been exposed.

13. The dangers inherent in identifying a known offender, then inferring that such individual 'must' be the person involved in the crime, were not in consequential. **Turnbull** guarded against the dangers of identification away from the scene of crime and relating that identification back to the crime, because the person identified was already known as –particularly as a known-offender.
14. The trial of Mr. Masirewa was rendered unfair, and his conviction unsafe, by such dangers not been addressed by the magistrate in accordance with **Turnbull** and **Wainiqolo**. The magistrate had erred in law. The Turnbull warning should have been given by the trial magistrate.

### **Conclusion**

15. In the light of the above, the Court make the following Orders;
  - i. The appeal succeeds;
  - ii. The conviction and sentence set aside; and
  - iii. The unsatisfactory nature of the evidence precluded any retrial.



  
**Waleen M George**  
**Acting Puisne Judge**

Dated at Suva this 27<sup>th</sup> day of August, 2025.

**Appellant in Person.**

**Solicitor for the Respondent: Office of the Director of Public Prosecution, Suva**