

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

**Criminal Case No. HAC 384 of 2022**

**State vs Ilai Naio Naulivou**

**For the State: Mr. T. Naimila**

**For the Accused: Mr. W. Navuni**

**Voir Dire Hearing: 17 July 2025**

**Date of Ruling: 11<sup>th</sup> September 2025**

**RULING ON VOIR DIRE**

1. The Accused stands charged with 1 count of Attempted Murder, contrary to section 44 (1) and 237 of the Crimes Act 2009, in the Information filed on the 23<sup>rd</sup> of January 2023.
2. It is alleged that on the 7<sup>th</sup> day of November 2022, at Samabula in the Central Division, Ilai Naio Naulivou attempted to murder Derein Prasad.
3. He was produced in the Suva Magistrate's Court on the 11<sup>th</sup> of November 2022 and the matter was transferred to the High Court on the same day.
4. The Accused was arraigned in the High Court on the 28<sup>th</sup> day of November 2022 and he elected to apply for Legal Aid Assistance. Directions were also made for Information and Disclosures to be filed.

5. On the 2<sup>nd</sup> of February 2023, the Accused entered a Not Guilty plea to the Information and counsel sought time to take further instructions with respect to the caution interview. Later counsel advised the Court that he would be challenging the record of interview and sought time to file Voir Dire grounds.

#### The Voir Dire Grounds

6. On the 6<sup>th</sup> of April 2023, the Accused filed the following Voir Dire grounds: -

- (i) The Accused Ilai Naio Naulivou objects to the admissibility of his Caution interview dated 9<sup>th</sup> November 2022 on the following grounds:

- (ii) The Accused was threatened by the Police Officers at the time of the exchange from the Inspector who had picked him from his mother's house at Laqere Bridge that escorted him to CID at Samabula Police Station. He was told to confess to the allegations and to just make things easier for everybody.

- (iii) The Accused was verbally pressured to admit to these allegations at the time of arrest and during the record of interview.

- (iv) The Accused never informed the Magistrate of the mistreatment as he was not aware of the Court Procedures.

- (v) Due to the threats, Mr. Ilai Naio Naulivou had admitted and signed his Record of Interview.

- (vi) For the Trial within a Trial, the Accused requires the following documents: -

- a) Station Diary
- b) Cell Block
- c) Meal Book
- d) Running Sheet

- (vii) The Accused reserves the right to file additional Voir Dire Grounds.

7. The State prepared and served Voir Dire disclosures and the matter was then fixed for the Voir Dire hearing on the 16<sup>th</sup> of July 2025.

8. The parties filed the following admitted facts on the 7<sup>th</sup> of June 2023: -
- i. The Accused Ilai Naio Naulivou of Kalokalo Crescent, Makoi. His date of birth is 15<sup>th</sup> September 1993, and he is in a de-facto relationship with Merelita Ralawa.
  - ii. The victim is Derein Prasad, 56 years old of 25 Cakacaka Road, Caubati (hereinafter referred to as Mr. Prasad).
  - iii. Ilai Naio Naulivou and his de facto partner Merelita Ralawa boarded a taxi driven by Mr. Prasad from Naivikinikini Settlement in Lami at around 11 am on the 7<sup>th</sup> of November 2022 and they were heading to Makoi.
  - iv. Ilai Naio Naulivou and his de facto partner Merelita Ralawa had a heated argument whilst travelling in the Taxi driven by Mr. Prasad on the 7<sup>th</sup> of November 2022.
9. The parties also filed a Pre Trial checklist and the Court advised that the admissibility of the record of interview would be determined first therefore the 16<sup>th</sup> and 17<sup>th</sup> of July 2025 was fixed for the Voir Dire Hearing.

#### The Voir Dire Hearing

10. The State called the following witnesses for the voir dire hearing: -
- a) PW1 - WDC 5462 Taina Lewatu
  - b) PW2 - Cpl. 4579 Josaia Soro
  - c) PW3 - WPC 4527 Ilisapeci Tafou
11. The following documents were tendered into evidence: -
- a) Charge Statement of Ilai Naio Naulivou dated 10<sup>th</sup> November 2022 – Exhibit P1
  - b) Record of Interview under caution of Ilai Naio Naulivou dated 9<sup>th</sup> November 2022 Exhibit P2

12. PW1 WDC Taina was the charging officer. She conducted the charge in the English language and accorded the Accused all of his rights and she read the charge to him and he advised that he understood the charge against him.
13. When he was given an opportunity to make a statement, the Accused stated that he wanted to seek forgiveness. This was recorded in his charge statement.
14. PW2 Cpl 4579 Josua Soro was the interviewing officer. He joined the force in 2006, and he confirmed that he was on duty on the 8<sup>th</sup> of November 2022 at the Samabula Police Station and he recalled that they received a report about a stabbing, and he was tasked to locate the suspect who committed the stabbing.
15. He then received a report from an informant that the suspect for the stabbing was with him (the informant). The informant brought the suspect to the junction of Wakanisila Road, and Cpl. Soro approached the suspect, and he informed him the reason why he was there and the allegations against him, an alleged stabbing at Princess Road.
16. Cpl. Soro then effected the arrest of the suspect by tapping him on the shoulder and the suspect came with him voluntarily. Cpl. Soro was with another Police Officer, though he does not recall his name. This officer had driven him there in an unmarked Police vehicle, a Hilux.
17. Cpl. Soro confirmed that he never at any time forced, threatened, intimidated or assaulted the suspect while he was in his custody. He also did not see anyone in his presence forcing, threatening, intimidating or assaulting the suspect. They brought the suspect to Samabula Police Station.
18. On the 9<sup>th</sup> of November 2022, he was directed by the Crimes Officer Samabula Police Station to interview the suspect, Ilai Naio Naulivou, under caution.
19. He conducted the interview in the presence of the witnessing officer WDC Ilisapeci. The Accused elected to be interviewed in English, and he recorded the interview. The

- record of interview was signed by the suspect, by Cpl Soro and WDC Ilisapeci. They all signed at various parts of the record of interview.
20. The interview commenced on the 9<sup>th</sup> of November 2022 at 10 am and the interview finally concluded at 2:30 pm of the 10<sup>th</sup> of November 2022.
  21. The suspect was given breaks although Cpl. Soro did not record these breaks on the first day of the interview.
  22. The interview resumed on the 10<sup>th</sup> of November 2022 at 10:15 am and commenced until 12:40 pm when they took a break for lunch and for a scene reconstruction. The interview resumed at 1:04 pm for the reconstruction and the reconstruction finished at 1:15pm.
  23. The interview resumed at Samabula Police Station at 1:40 pm and the interview finally concluded at 2:30 pm.
  24. Ilai Naio Naulivou answered all the questions put to him and he did so voluntarily. He was not threatened or promised anything in exchange for his statement.
  25. Under cross examination Cpl. Soro maintained his evidence. He denied that the officer who drove him to Wakanisila threatened the Accused or that he told him to cooperate “just to make this easy”
  26. He confirmed that everything that is recorded in the record of interview came from the Accused Ilaio Naio Naulivou.
  27. The final witness was DC Ilisapeci Tafou, the witnessing officer. She described her role in the interview as the witnessing officer. She confirmed that the Accused answered all the questions put to him.
  28. She denied that the Accused was threatened or promises were made to him and she confirmed that the Accused answered all of the questions put to him.

29. That was the evidence for the State.

The evidence for the Accused

30. In his evidence, the Accused Ilai Naio Naulivou stated that on the 8<sup>th</sup> of November 2022, in the evening, he was at home at Kalokalo Crescent having dinner when some Police officers knocked on his door. They were not wearing uniforms, but they told him that they were Police officers, and he gave himself up and got into the vehicle.

31. They drove up Wakanisila Road and at Laqere he was put in another vehicle, where Josaia Soro (PW2) was in.

32. He testified that as he was being driven down Wakanisila Road, the officers were swearing at him. There were many officers in the vehicle and as they were doing this, he was scared and looking down.

33. Later as he was being driven to Samabula Police Station, there was another officer in the vehicle, an Inspector. The Inspector started swearing at him and threatening him and this scared him.

34. When they reached the Samabula Police Station he was locked in the cell. Josaia Soro came and checked on him and he was swearing at him and threatening him, and he was scared and panicking.

35. He testified that this was the reason why he admitted to the allegations, because he was scared and panicking. Josaia Soro also told him to “make it easier.”

36. He confirmed that he had declined when he was asked whether he wanted to see a lawyer from Legal Aid. The reason that he did so was because Josaia Soro threatened him while he was in the cell and told him to make it easier.

37. He also confirmed that after the interview was completed, he was not taken to see a senior Police Officer to lodge a complaint.

38. Under cross examination, he maintained that he was threatened, sworn at and told to cooperate, to make it easier. He was scared and panicking and that is why he made those admissions.

39. That was the evidence of the Accused.

40. At the close of the evidence the parties agreed to rely on the evidence led and they would not make any further submissions therefore the matter is now adjourned for the ruling.

### Analysis

41. The Constitution guarantees the following rights to an arrested or detained person at section 13 and for the purposes of this voir dire challenge, the relevant sections are section 13 (1) (a) to (d), which provides as follows: -

#### “Rights of arrested and detained persons

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;” (Emphasis added)

42. Section 288 of the Criminal Procedure Act provides for voir dire hearings to be conducted at any stage of the proceedings after the plea has been taken.

43. The principles relating to voir dire hearings are well settled and were discussed in the case of State –v- Nakauyaca – Voir Dire Ruling [2020] FJHC 825; HAC 283 of 2019 (9 October 2020).

44. The law was discussed from paragraphs 6 to 9 of the judgment as follows: -

“The Law

[6] In *Ganga Ram and Shiu Charan v. Reginam*; Criminal Appeal No. 46 of 1983 (13 July 1984) (unreported) the Fiji Court of Appeal outlined the two grounds to be considered for admissibility of confessions;

*“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 the tyranny of fear. *Ibrahim v. R* [1914] AC 599; *DPP v. Ping Lin* (1976) AC 574. Secondly 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 will, by trickery or by unfair treatment>*Regina v. Sang* [1979] UKHL 3; (1980) AC 402. This is a matter of over overriding discretion and one cannot specifically categorize the matters which might be taken into account.”*

[7] His Lordship, Justice Daniel Goundar in the case of the *State vs. Maikeli Rawaqa and Segrans Murti* Criminal Case No. HAC 42 of 2004 (16 February 2008); held as follows:

“The principal governing the admissibility of confessions are well settled. Confessions could not properly be given in evidence unless it was shown that they were made voluntarily, that is, not obtained through violence, fear of prejudice, oppression, threats and promises or other improper inducements (*Ibrahim v R* [1914] AC 599). Even if such voluntariness is established, the trial Judge has the discretion to exclude the confessions on a general ground of unfairness (*R v Sang* [1979] UKHL 3; [1980] AC 402). In addition, confessions could be excluded for breaches of Constitutional rights.”

[8] Accordingly, in order for a confession made by an Accused person to a police officer to be admissible as evidence against the maker of that confession, the confession should have been made by that Accused voluntarily, meaning it should have been made by the Accused on his own free will, with full appreciation of the legal consequences. If the said confession is made as a result of oppression, such confession would not be admissible and should be excluded. Oppression is anything that undermines or weakens the exercise of free will. However, even if such voluntariness is established, the trial Judge has the discretion of ruling such

confession inadmissible, if it is obtained in an unfair manner (on general grounds of unfairness).

[9] The onus of proving voluntariness/lack of oppression and fairness is on the prosecution and they must prove these matters beyond reasonable doubt. If there has been a breach of any of the Accused's Constitutional rights, the prosecution must prove that the Accused was not thereby prejudiced."

35. The Court of Appeal also discussed this in the case of Josateki Lulu v State [2016] AAU 43/11 (HAC 62/10S) 29 November 2016 where the Court stated as follows:-

"In assessing weight and value of a confession, assessors should take into consideration all circumstances in which it was made, including allegations of force, if true. Trial judge is bound to place a defence challenging the caution interview on the basis that D simply agreed to what the police wanted him to admit due to persistent physical assault already inflicted upon him and a fear of similar assault in the future by police, to evaluate probative value and weight to be attached to the caution interview. Detached direction is adequate

36. The Accused Ilai Naio Naulivou answered a total of 108 questions, and he was given breaks at his request, although not all the breaks were recorded. He was advised of all his rights, and he chose not to exercise his right to counsel.
37. He has testified that he was sworn at and threatened by Police Officers, from his initial arrest at Wakanisila, being driven down to Samabula Police Station, and inside the cell at Samabula Police Station.
38. He has not specified the swear words that were used or the specific threats that were made, apart from people telling him to "make it easier." It would have assisted the Court in assessing the nature and types of threats made to him and whether these words in themselves would have constituted oppression.
39. After considering the evidence led, I am satisfied beyond a reasonable doubt that the Accused Ilai Naio Naulivou, answered all of the questions that have been recorded by Cpl. Josua Soro in the record of interview that has been tendered as Exhibit P2.


40. The Court is further satisfied beyond a reasonable doubt that the Accused, Ilai Naio Naulivou gave the statement of his own free will without any coercion, physical assault or any false promises or inducements on him.

41. I have also examined the conduct of the Police officers at the arrest from Kalabu, during the interview and during the conduct of the charge and I am satisfied that they acted fairly and accorded to him all his rights and protections under the Constitution and the law. He was arrested properly and brought down to Samabula Police Station where he was locked up for the night and the interview started the next day.

42. I therefore find that the State has discharged its burden and the statement of Ilai Naio Naulivou shall be admissible in evidence against him at the Trial of this matter.

43. So ordered.



  
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**Mr. Justice U. Ratuveli**  
**Puisne Judge**

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