

IN THE MAGISTRATES' COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. 1841 of 2019

STATE

v.

TOMAS BELMAR

Prosecution : Sergeant R. Ram, *of counsel*, for the Police Prosecution Department

Accused : Mr. S. Nadan, *of counsel*, of Nadan Law.

EXTEMPORE JUDGMENT

You are on trial for **Resisting Arrest** contrary to Section 277 (b) of the Crimes Act 2009, the particulars are that you “on the 22nd day of November 2019 at Harris Road, Suva in the Central Division resisted lawful arrest by police constable 5525 Akolinio whilst effecting arrest in the due execution of his duty.”

At trial, the State called two witnesses. PC 5525 Akolinio testified that he had been operating a Dragger Machine at a police roadblock in the early hours of 22/11/2019 along Harris Road. The car you were driving came to a stop in front of the roadblock. He walked toward your vehicle. You rolled your window down and he said he could smell alcohol on your breath as he bent down to ask you questions. He informed you that it was a crime to drink and drive under our laws. He asked you to blow into the Dragger Machine and you refused. He asked you to step out of the vehicle. You complied. He told you you would need to be taken to Totogo Police Station for further testing on Dragger Alcohol Test 7110. At this point he said you did not cooperate. At this point he said you did not cooperate. He touched you and told you his name and the reason for your arrest. He tried to cuff you but you resisted by waving your hands around. He then sought and received assistance from PC Kunal who had been on duty with him that night. Together they were able to place you in cuffs and you were escorted to Totogo Police Station.

PC Kunal testified next. The effect of his testimony was that you were shouting when initially approached by PC Akolinio. He led you across the street. He came over to you when you had stepped out of the car. He witnessed PC Akolinio attempt to arrest you. You shouted, moved around, threw your hands around and so he assisted PC Akolinio and together they were able to place you in cuffs and take you to the police station.

I found a case to answer. I explained the substance of the State's allegation. You said you understood. I explained your options in full as mandated by Section 179 of the **Criminal Procedures Act 2009**. You indicated you understood. You said you wished to testify, and you indicated you did not wish to call witnesses.

You testified that you suffer from deep anxiety. When stopped by the police you realized you had left your wallet and driving license at home. You parked and felt a deep sense of nervousness and fear. You did not wish to undergo a breath test by the roadside. You agreed to a test at the police station but when the police officer tried to place you under arrest you tried to convince him not to. You agreed in re-examination that you were speaking in a loud excited voice. You were waving your hands around as you spoke. This is how you usually speak when excited. When you finally realised that they were not going to desist, you submitted to the arrest and allowed yourself to be handcuffed. You deeply regret the incident and wish you had been able to respond in a calmer manner.

PRESUMPTION OF INNOCENCE

I remind myself that you are presumed innocent until proven guilty.

BURDEN OF PROOF/STANDARD OF PROOF

The State must prove each element of the offence charged beyond reasonable doubt.

ELEMENTS

The elements the State must prove beyond reasonable doubt are as follows:

1. You
2. Intentionally
3. Resisted
4. A police officer
5. In the due execution of his duty

It is incumbent upon the State to prove that you knew PC Akolinio was a police officer.

ANALYSIS

Identification is not in dispute. It is equally clear that you knew you were dealing with the Police that night. It is not disputed that PC Akolinio was an on duty police officer at the time.

It is useful to consider whether PC Akolinio was acting in due execution of his duty when he attempted to handcuff you.

Pursuant to section 18 (f) of the **Criminal Procedure Act 2009**, a police officer may without an order from a Magistrate and without a warrant, arrest any person whom the officer finds in any place during the night whom he or she suspects on reasonable grounds of having committed an offence.

You admitted to having consumed wine at a function the evening prior. You said that you rested a bit and tried to make sure you were okay prior to driving. You were on your way home before you stopped at this random police roadblock. PC Akolinio said he smelt alcohol on your breath. It is clear he suspected you of driving while impermissibly intoxicated. It is equally clear that you were nervous and in a state of panic.

I accept you were speaking in loud tones in an excited manner. From a distance, it looked to PC Kunal to be uncooperative, aggressive behaviour. PC Akolinio was more measured in his assessment. He said he felt the need to handcuff you because you were drunk, not cooperative and he felt this was the best way to guarantee your safe transport to Totogo Police Station for further testing.

He confirmed he had not received written instructions from the Commissioner but he had received directives from his superiors and had been rostered on that night. Pursuant to the presumption of legality, which has not been rebutted here and now, I accept that PC Akolinio had been acting in due execution of his duty in all respects that night. More, the arrest was lawful in all the circumstances.

The question remains, did you intentionally resist arrest. To resist arrest is to “take any action to prevent one’s arrest.”¹ While a person may use reasonable force to resist an illegal arrest (**Christie v. Leachinsky** [1947] AC 573, a person who takes any action to prevent his or her lawful arrest lays himself or herself open to charges.

Here, I reject any and all contentions that you stayed still and simply tried to reason with the police officers that night. It is contrary to the evidence of the police officers and your own account of your levels of panic and fear that night. I find you were speaking in a loud voice, and in an excited manner, and I find that you were moving your hands in a manner that prevented PC Akolinio from cuffing you.

He had done all that was necessary. He had identified himself, touched you and had told you were going to be taken down the Totogo Police Station under arrest to be tested for alcohol levels in your system or words to that effect. You were duty bound at that point to stop, stand still and submit to the arrest. You did not. I accept his evidence that you moved away from him and made the cuffing difficult by waving your hands and otherwise acting in a manner that made it necessary for him to call for assistance from a fellow officer to complete the arrest.

¹ Oxford Dictionary of Law, 2017.

I find this was intentional. As you yourself admit, you did not wish to be handcuffed and you did not immediately stop and submit to this process when you first realised what was going to happen. I am satisfied beyond reasonable doubt that you intentionally resisted arrest that day.

I accept that you suffer from deep anxiety but I also accept that you were still able to make rational decisions that night. You stepped out of the car. You refused to submit to a roadside test. You refused to submit to restraints. You finally submitted when you realised the arrest and handcuffs were inevitable. There being no material to satisfy me that you did not know the nature or quality of the conduct or that you could not reason with a moderate degree of sense or composure about whether the conduct as perceived by reasonable people was wrong; or that you were unable to control your actions, I find that mental impairment is not available as a defence here and now.

To the contrary, you were able to breath and calm yourself; you knew what you were doing and with a moderate degree of sense and composure you accept that your conduct could have been 'misinterpreted' by those viewing you. More, you deeply regret what you did that day. I find you guilty of **Resisting Arrest** as charged. I will now hear mitigation before I determine conviction and sentence.



Seini K Puamau
RESIDENT MAGISTRATE

DATED at SUVA this 1st day of April 2020.