

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

Criminal Case No: 201/2023

STATE

V

ZOHEEB ZARAL BEGG

For the Prosecution : Sgt.Shailend(PP)

For the accused:Mr.J.Cakau(VOSAROGO LAWYERS)

Date of Judgment: 05 December 2025

JUDGMENT

Introduction

1. The accused is charged with one count of Unlawful importation of Illicit Drugs , contrary to section 4(1) of the Illicit Drugs Control Act (IDCA) and one count of Unlawful possession of Illicit Drugs contrary to section 5(a) of the IDCA.¹
2. The particulars of the offences are:

ZOHERB ZARAL BEGG, on the 3rd day of February and on the 7th day of February, 2023, at Suva, in the Central Division, without lawful authority imported Methamphetamine weighing 1.183 Kilograms, an illicit drug.

ZOHERB ZARAL BEGG, on the 7th day of February, 2023, at Suva, in the Central Division, without lawful authority possessed Methamphetamine weighing 1.183 Kilograms, an illicit drug

3. The accused pleaded not guilty hence this matter proceeded for the hearing.
4. During the hearing, the prosecution called twelve witnesses and also produced twelve exhibits.
5. At the end of the Prosecution case, this court found a case against the accused and gave him his rights as per the Criminal Criminal Procedure Act (CPA).²
6. The accused elected to remain silent and also did not call any other witnesses.

Summary of Evidence

Prosecution Evidence

PW1 – Hitesh Naidu

¹ No 44 of 2009.

² No 43 of 2009.

7. PW1 is a Senior Customs Officer at FRSC and, in 2003, was working at the DHL Customs Office in Nadi. On 03/02/2023, there was a shipment from the USA on flight FJ811, and the items were delivered to the DHL bond. Among the items was a parcel addressed to one Zohaib Begg (the accused) from Rikesh Nandan in the USA. PW1 requested the Dog Unit to attend and check the shipment.

8. Officer Kameli arrived with the sniffer dog and, after conducting checks, informed PW1 to examine the parcel. In the presence of Shivneel Kumar of DHL, PW1 opened the package and found three bottles of dietary supplements labelled as BCAA. The bottles were not sealed, and inside were white crystals. Suspecting the presence of illicit drugs, PW1 contacted FDTU Senior Customs Officer Faraz Khan. Faraz Khan arrived and, after checking the items with the dog, requested Solomone of FDTU to further examine the bottles.

9. Solomone arrived with the NARTEQ device, tested the substance, and confirmed it to be methamphetamine. Following this, PC Mamanga was called to take custody of the package. PW1 identified the bottles, which were marked as PE1. He also marked the package as PE2. PW1 further marked the detention notice, the ACM transfer copy, and the master airway bill as PE3, PE4, and PE5 respectively.

10. In cross-examination, PW1 stated that when the parcel arrived at the DHL bond, the dog indicated the package and it had not been tampered with. He confirmed that he had the authority to examine the packages, and after opening the parcel, he contacted Faraz Khan, who subsequently called Solomone.

PW2- Solomone Cagilevu

11. PW2 is employed in the FRSC Dog Unit and was on duty on 03/02/2023 when he was contacted by PW1 to conduct testing. He arrived with the NUCTECH device and examined the substances in the bottles, which tested positive for methamphetamine. He also identified the bottles marked as PE1.

12. In cross-examination, PW2 stated that he became aware of the package through PW1.

PW3- PC Jone Mamaqa

13. PW3 has been serving in the Fiji Police Force for the past 10 years. He was informed by Cpl Shobna about suspected drugs at the DHL office. He proceeded to the location and met PW1, who handed him the customs card and the three bottles. PW3 transported these items to the Border Police office, where he sealed the package and handed it over to Cpl Shobna, the Crime Exhibit Writer.

14. The following day, he collected the package and took it to Nasova for testing. PW3 handed the bottles to Ms. Susana, the Scientific Officer, and later collected them in the afternoon along with the test results. He then handed the items over to IP Viliame.

PW4- Ms.Susana Lawedrau

15. PW4 is employed as a Principal Scientific Officer and confirmed that she prepared the analyst report (PE7). She stated that she received the samples from PW3, which consisted of three plastic bottles. After conducting the required analysis, she repacked the samples and marked the packages as PE8 and PE9 respectively. She also identified the bottles marked as PE1.

16. In cross-examination, PW4 stated that the analyst report tendered in court was missing a page. She further testified that, at present in Fiji, there is no Government Analyst and that the responsibilities of that office have been transferred to Scientific Officers.

PW5- Shivnil Kumar

17. PW5, with the consent of the defence, had his statement marked as PE10. In his evidence, he stated that he works as a Bond Officer and that he handed over the package to PW1 for inspection. The witness also identified the package marked as PE2. He was not cross-examined.

PW6- Shanil Narayan

18. PW6 stated that he received the shipments from ATS and delivered them to the DHL warehouse. He was not cross-examined by the defence.

PW7- PC Josataki

19. PW7 was stationed at the Narcotics Bureau on 07/02/2023 and was tasked, together with DC Peni, to conduct a controlled delivery. They waited at the DHL office in Raiwaqa for a person to collect the parcel. At around 1400 hours, they observed a black vehicle (registration IV 991) arrive, and an Indo-Fijian male exited the vehicle and entered the office. He collected the parcel and, upon exiting, PW7 approached and identified himself. PC Peni informed the individual that the parcel contained drugs and escorted him to CID Headquarters. PW7 described the individual and identified the accused in court as the person who was arrested with the parcel on that date.

20. In cross-examination, PW7 was asked whether he looked inside the box, and he denied doing so.

PW8-DC Penii Daunibau

21. PW8 was also attached to the Narcotics Branch in 2023 and was assigned to observe the DHL office at Raiwaqa on 07/02/2023 together with PC Jonatake (PW7). He observed an Indo-Fijian male arrive and collect the parcel. Outside the office, PW8 stopped the individual and informed him that the parcel contained drugs. The person stated that the parcel belonged to his cousin, Imran Khan, who was waiting in the vehicle. PW8 identified the package marked as PE2 and also identified the accused in court as the person he arrested on that date.

22. In cross-examination, PW8 was asked whether he saw the contents of the box, and he stated that he did not. He also admitted that the accused told him about Imran, and confirmed that the police were aware of Imran as a drug offender. The witness further admitted that Imran was interviewed by the police.

PW9- Mereisi Raaraasea

23. In 2023, she was employed as a Customer Service Representative for DHL Express, and on 07/02/2023 she was on duty at the DHL office in Raiwaqa. The accused came to collect a parcel after providing his passport biodata (PE11). She also identified the parcel marked as PE2.

24. In cross-examination, the witness was asked whether the parcel should have been checked when it was shipped, and she admitted that it should have been.

PW10- IP Shobna Maaharaj

25. She is currently working in the Border Police Unit at Nadi Airport. On 03/02/2023, she was in her office when she received an exhibit seized at the airport from DC Mamaqa (PW3). She sealed the exhibit and formally marked it, identifying the package as PE9. The package contained three bottles

. PW11- PC 4236 Paula Joniu

26. PW11 is the Investigating Officer and conducted the caution interview of the accused via video recording. During the interview, the accused admitted that although the parcel was under his name, it actually belonged to another person. PW11 identified the interview, which was marked as PE12.

27. In cross-examination, PW11 stated that the accused informed him that another person had made arrangements regarding the parcel. The witness also confirmed that the accused disclosed that the actual owner of the parcel was Imran, who was already known to the police as a drug offender. PW11 further stated that the police arrested Imran, interviewed him, and charged him in another court.

28. PW11 was also asked whether the accused showed him Viber messages from Imran, and he admitted that the accused did, but also acknowledged that he did not verify the messages directly with Imran. He further admitted that the parcel collected by the accused at the DHL office did not contain drugs, as the contents had been replaced.

Closing Submissions

29. Only the defence filed comprehensive closing submission and in that they submitted that there was no authority for controlled delivery, chain of custody was not proven by the prosecution, analyst report is not original and can not be accepted and the accused lacked the knowledge and was tricked by his cousin to bring the drugs. Based on all these , the counsel submitted the prosecution has failed to prove the case beyond reasonable doubt and the accused needs to be acquitted from this charge.

The Law

30. In **Woolmington v DPP**³ it was held that :

³ [1935] AC 462 .

“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt, subject [to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained” (per Viscount Sankey L.C. at pp. 481-482).

31. The accused are charged with one count of Unlawful importation of Illicit Drugs , contrary to section 4(1) of the IDCA and one count of Unlawful possession of Illicit Drugs contrary to section 5(a) of the IDCA.

32. According to the particulars in the charge sheet, the elements for which the prosecution must prove beyond reasonable doubt are :

1st count

- a. The accused person ;
- b. Between 03/02/2023 and 07/02/2023 ;
- c. Without lawful authority ;
- d. Imported Methamphetamine weighting 1.183kgs , an illicit drug to Fiji .

2nd count

- a. The accused person ;
- b. On 07/02/2023 at Suva in the Central Division;
- c. Without lawful authority ;
- d. Possessed 1.183kgs of Methamphetamine, an illicit drug .

Analysis

I would first consider the main grounds raised by the counsel for the accused in his submission.

Lack of authority for controlled delivery and unlawfully obtained evidence

33. The counsel submitted that the controlled delivery was conducted without proper authority, and therefore, all evidence obtained as a result was illegally obtained and inadmissible in court.

34. The counsel relied on his argument under Sections 12 and 14 of the IDCA.

35. Section 14 states :

“1) If a police officer of or above the rank of inspector suspects on reasonable grounds that any person has committed, is committing or is about to commit an offence against this Act or a customs officer of or above the position of senior customs officer suspects on reasonable grounds that any person has committed, is committing or is about to commit an offence against section 4, the officer may authorise the conveyance of an illicit drug , controlled chemical or controlled equipment or of property suspected to be directly or indirectly derived from the commission of an offence against this Act (hereinafter referred to as a "controlled delivery").

2) Notwithstanding any other written law, authorisation of a controlled delivery includes authorisation of-

(a) the arrival into, departure from or transit through the Fiji Islands of any craft, vehicle or person undertaking the controlled delivery;

(b) forcible and covert entry into any craft or vehicle and into anything containing the items subject to the controlled delivery for the purpose of replacing all or any part of those items or placing a tracking device upon them;

(3) The placement of a tracking device pursuant to subsection (2)(b) does not require a warrant under section 13.”(emphasis added)

36. Section 12 provides:

“1) A High Court Judge may, upon written application-

(a) from a police officer of or above the rank of inspector stating that the police officer has reasonable grounds to suspect or believe that a person has committed, is committing or is about to commit any offence against this Act;

(b) from a customs officer of or above senior customs officer stating that the customs officer has reasonable grounds to suspect or believe that a person has committed, is committing or is about to commit an offence against section 4,

if satisfied that there are reasonable grounds for that suspicion or belief, issue a warrant authorising the covert monitoring and recording, by any means, of the conduct and communications, including telecommunications, of the person.

(2) A warrant issued under this section may be renewed by further application.”

36. The counsel submitted that at DHL, Raiwaqa, the police conducted a controlled delivery exercise, and as there was no evidence that an Inspector or above had authorized this delivery, the evidence obtained was illegal.

37. Firstly, I find this argument about illegally obtained evidence would be applying only for the 2nd count only as the drugs were replaced after testing at Nasova.

38. Secondly, PW7 and PW8, who conducted this controlled delivery, were never questioned by the defence regarding who gave the authority for the delivery. In their evidence-in-chief, they specifically stated that they were detailed by their superiors for this task.

39. Even if I were to accept the argument that the for the second count, the evidence was obtained without the authority of an Inspector or above, as per Section 14, rendering it technically unlawful, I find that it should be admitted in the interest of justice under Section 14(2)(k) of the Constitution of Fiji.

40. Section 14(2)(k) of the Constitution provides that the accused has a right not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted.

41. Therefore, I do not find any merit in this objection raised by the defence.

Break in chain of Custody

42. The counsel further submitted that the prosecution has failed to establish the chain of custody, as some of the witnesses did not identify the drugs.

43. In *Prasad v State*⁴ the court held:

“The chain of custody is a legal term that refers to the chronological sequence of the movement of a substance, or a documentation of certain evidence. Such a chronological sequence of the events or movements is important to establish that the alleged substance has not been contaminated or interfered with any other foreign objects, or that the integrity of the original version of the substance had not been interfered or contaminated until it was tested and documented. [State v Kumar [2018] FJHC 1217; HAC347.2017 (12 December 2018)].

The phrase "chain of custody" in a drug case refers to a list of all people who have had contact with the drugs from seizure to trial. It must be established as to the officer who takes or seizes the drug, the officer (s) stores the drugs, the drugs evaluated by an expert for their weight and identity and after evaluation, the drug must return for safe keeping until it is exhibited in court. Each person handling the drug should be called as a witness to explain their role in the investigation to the court. If there is a gap in the chain of custody then that can create a doubt as to one or more aspects of the prosecution case that the drug may have been tampered, since there is no notion as to what happened with that drug when it was in the custody of the missing witness. A proper chain of custody is detailing who was involved, when the transaction occurred, where the drugs are located, and the reason for the transaction. The chain may also include photographs or videos of the transaction.”

44. The counsel argued that PW3 and PW11 failed to identify the drugs, resulting in a break in the chain of custody and raising doubts about the reliability of the evidence.

45. I will therefore consider the evidence presented during the hearing regarding this ground.

⁴ [2023] FJHC 514; HAA02.2023 (28 July 2023).

46. PW1 stated in his evidence that he found white crystals in the bottles, which he handed over to PW3. PW1 identified the bottles, which were marked as PE1. PW3, in his evidence, stated that he received the bottles from PW1, transported them, sealed them, and handed them to PW10.

47. PW10 testified that she received the exhibit containing the three containers from PW3, which she kept in the exhibit room.

48. The following day, PW3 collected this exhibit from PW10 and took it to Nasova for examination by PW4. PW4 identified PE1 (the bottles) containing the white crystals.

49. I also note that these bottles were marked with Job No. 223141.

50. The white crystals in the bottles were tested and confirmed to be methamphetamine, with a total weight of 1,183 grams.

51. Therefore, I am satisfied that the drugs contained in PE1 were properly tested by PW4 and that there was no break in the chain of custody as alleged by the defence.

Validity of the Analyst report

52. The counsel submitted that the analyst report is inadmissible because it was not prepared by a Government Analyst and that the report submitted was not the original.

53. However, after examining the report, I do not find it to be a photocopy, as alleged by the defence.

54. With respect to the validity of the report (PE7), the counsel based his argument on Section 36(1) of the IDCA, which states:

“In any proceedings under this Act, the production of a certificate purporting to be signed by a Government analyst is *prima facie* evidence of the facts stated in the certificate.”

55. However, PW4 testified that, at present, there are no Government Analysts in Fiji and that their responsibilities have been transferred to Scientific Officers.

56. I also note that Courts in Fiji have been accepting reports prepared by these Scientific Officers to confirm the quantity and quality of drugs, in accordance with Section 36 of the IDCA. Further when this issue was raised at the end of the Prosecution case, I invited the counsel for the accused to submit me case authority regarding validity of the reports. The counsel has failed to submit any to this court. Accordingly, I find that this court can rely on PE7.

Possession and Knowledge

57. I will now consider the real issue in dispute in this case, namely whether the accused possessed the necessary fault element for these offences.

58. Lord Hope in the House of Lords in **Lambert**⁵, stated that ‘there are two elements to possession. There is the physical element, and there is the mental element’

59. His Lordship Justice Gounder in **Koroivuki v State**⁶ held that;

⁵ [2002] 2 AC545.

⁶ (2013) FJCA 15;AAU0018.2010 (5 March 2013).

" The Illicit Drugs Control Act 2004 does not define the word " possession". In absence of a statutory definition, the court can be guided by the English common law definition of the word " possession". Possession is proven if the accused intentionally had the drugs in his physical custody or control to the exclusion of others, except anyone who was acting in concert with him in the alleged offence (Lambert 2002) 2 AC 545). Possession is also proven if the accused intentionally had the substance in some place to which he either alone or jointly with some other person acting in concert with him has access and might go to get physically or control it. (Lambert, supra)".

60. In *Lata v State*^[9], the Court of Appeal referred to common law and held that the fault element of Possession is both knowledge and intention. The Court observed at [31]:

“The law separates the physical element of possession (the corpus) from the mental element (the animus possidendi), i.e. the intention to possess. **The fault element of possession is knowledge and intention. A person has knowledge of something if he or she is aware that it exists or will exist in the ordinary course of events. There are circumstances in which the requisite knowledge may be imputed. Knowledge includes deliberately shutting one’s eyes to the truth. Mere knowledge of the presence of illicit drugs cannot be equated with control. A person has intention with respect to possession if he or she means to engage himself or herself in possessing the substance. It is therefore implicit that in every case of possession, a person must know of the existence of the thing which he or she has or controls, although it may not be apparent whether a person knew of the quality of the thing in question. A person will not be liable if he neither believed, nor suspected, nor had any reason to suspect that the substance was an illicit drug.** Lord Scarman remarked in *Boyesen* [1982] 2 A.E.R 161 adopting the description of possession given by Lord Wilberforce in *Warner v Metropolitan Police Commissioner* [http://www.paclii.org/cgi-bin/LawCite?cit=\[1969\] 2 AC 256?stem=&synonyms=&query=justin ho\[1969\] 2 AC 256](http://www.paclii.org/cgi-bin/LawCite?cit=[1969] 2 AC 256?stem=&synonyms=&query=justin ho[1969] 2 AC 256) said: “The question to which an answer is required...is whether in the circumstances the accused should be held to have possession of the substance rather than mere control. In order to decide between these two, the jury should, in my opinion, be invited to consider all the circumstances...the manner and circumstances in which the substance, or something which contains it, has been received, what knowledge or means of knowledge or guilty knowledge as to the presence of the substance, or as to the nature of what has been received, he had at the time of receipt or thereafter up to the moment when he is found with it...” I would venture out to say the manner in which the substance was dealt with by the Accused, after it has been received, like in this case, would also be indicative of the intention of the person who received it. “

61. In *State v Ho*⁷ the court discussed about the importation in the following manner :

⁷ [2025] FJHC 473; HAC022.2024 (31 July 2025).

Section 2 of the [Illicit Drugs Control Act](#) defines ‘import’ as follows:

...to **bring or cause to be brought**, into Fiji, and is a **continuing process including any stage thereof** until any item reaches the intended recipient (Emphasis added).

1. In [State v Nikolic](#)^[1], Goundar J, having referred to the interpretation given by the Australian Courts, defined ‘importation’ in the context of illicit drugs as follows:

[12] There is no ambiguity in the definition. According to the definition, importation is a continuing process. The actual act of importing ceases when an illicit drug reaches the intended recipient. The act of importing embraces activities both preceding and following the arriving of the goods, which are directly related, or proximate or incidental to, bringing the goods into the country. This interpretation is consistent with the interpretation given by the Australian courts to the word importation contained in the Australian narcotic legislation (*R v Sukkar* [2005] HSWCCA 54 (16 March 2005), *R v Toe* <http://www.austlii.edu.au/au/cases/sa/SASC/2010/39.html> [2010] SASC 39 (26 February 2010), *DDP Cth v Famer* (a Pseudonym) and Ors <http://www.austlii.edu.au/au/cases/vic/VSCA/2017/292.html> [2017] VSCA 292 (17 October 2017)).

[13] Given that the act of importing is a continuing process and embraces all activities incidental to the bringing of the illicit drug into Fiji, the offence is committed upon the arrival of the illicit drug into Fiji and may extend to a period till the illicit drug reaches the intended recipient.

61. In *Toa v State* his Lordship Justice Premathilke discussed about the fault element in the importation as : ⁸

In my view, importation is a result of conduct or a circumstance in which conduct, or a result of conduct occurs as stated in section 15(1) (b) and (c) of the Crimes Act, 2009 and not a mere conduct as set out in section 15(1)(a). ‘Conduct’ means an act or an omission to perform an act or a state of affairs and ‘engage in conduct’ means (a) do an act or (b) omit to perform an act [*vide* section 15(2)]. Since section 05 of the Illicit Drugs Control Act 2004 (*i.e.* the law creating the offence) does not specify a fault element for the physical element of importation which is the result of conduct or a circumstance in which conduct or the result of conduct occurs, as opposed to mere conduct, section 23(2) of the Crimes Act, 2004 would become applicable and recklessness becomes the fault element for the physical element of importation. In terms of section 21(4) of the Crimes Act, when recklessness is the fault element, proof of intention (section 19), knowledge (section 20) or recklessness [section 21(1) and (2)] will satisfy the fault element of recklessness. Thus, in a case where an accused is charged with importation of an illicit drug under section 5 of the [Illicit Drugs Control Act 2004](#), the prosecution can prove

⁸ [2025] FJHC 473; HAC022.2024 (31 July 2025).

either intention or knowledge or recklessness as the fault element. In other words, proof of any one (or more) of these fault elements would suffice.

62. The accused has elected to remain silent in this case and this is his right under the Constitution and CPA and I am not going to draw any adverse inference from that.⁹

63. However, the Prosecution has marked his caution interview as PE12 where he has denied these allegations.

64. The purpose of a out of the court statement made by the accused has been discussed in *Tukai v State*¹⁰ where it was held:

“According to the above comprehensive guideline, a statement made by the accused outside the court, could be admissible in evidence only on the following instances, that:

1. If the statement contains admissions or confessions, then the admission or

the confession in the statement could be used against the accused as evidence of the truth of facts admitted,

1. A Statement made to the police, which contains no admissions or

confessions, could be used as evidence of the accused’s reaction when he was encountered by the police. The statement is not an evidence of the truth of facts stated in it. It is an evidence of the behaviour of the accused when he is encountered with the allegation by the police,

1. Mixed Statement, which contains admissions and also the exculpatory

explanation or excuses. If the prosecution relies on the mixed statement, the court is allowed to take into consideration whole of the statement including the admissions as well as the exculpatory explanation in order to determine whether the statement contains admissions or confession and then the truthfulness of such admissions or confessions,

1. Prosecution could use such statement made by the accused which contains

the denial of the allegation, in order to draw the attention of the inconsistent with another denial. Under this circumstances, the denial in the statement does not

⁹ S 14(2) (J), Fiji Constitution.

¹⁰ [2019] FJHC 659; HAA052.2018 (3 July 2019).

become an evidence of the facts stated in the statement, and it is only an evidence of inconsistency,

1. The accused is not allowed to use a statement which contains self-serving

statement in order to prove his consistency. Under the rules of evidence, such statements are considered prior consistent statements and are inadmissible.

(Kumar v State <http://www.paclii.org/fj/cases/FJCA/2014/151.html>[2014] FJCA 151; AAU0126.2013 (19 September 2014),

1. The guidelines enunciated in R v Pearce (supra) could be adopted into the jurisdiction of Fiji as a guidance in relation to the admissibility of the statements made by the accused outside the court in evidence. “

65. However, as the accused has elected to remain silent, I find that the prosecution cannot rely in this statement to draw contradiction.

66. Hence, it appears that the only reason the prosecution can use this caution interview is to show the reaction of the accused when confronted with the allegations against him.

67. The accused throughout in his interview has denied importing the drugs and also in possession of it. I would quote the relevant parts of the interview as follows:

Disk 03,Part 1 ,page 8

ASP Tevita Naodele: Did you ask him whats ah?

Zoherb Begg: Yes ummm earlier he asked me for my ID and TIN

ASP Tevita Naodele: When did he ask you your ID?

Zoherb Begg: Couple of weeks back. I would have to go through my phone to go to give you that date, sorry sir.

ASP Tevita Naodele: Did he tell you the reason for ah getting your ID and ah?

Zoherb Begg: He just said that he was gonna get the, get the shipment under the name and he's gonna make his order.

ASP Tevita Naodele: Did he ask him, did he ask him, what sort of shipment?

Zoherb Begg: I asked him but he just laugh that off he didn't say anything.

ASP Tevita Naodele: Who else was the, who was present also when you two were talking about that?

Zoherb Begg: Ah it was just me and him.

ASP Tevita Naodele: Did you ask him why he need your ID?

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Zoherb Begg: Ah, yes, he said he just needs to import a package or something then I had question him about that he said don't worry you will get \$1000.00.

ASP Tevita Naodele: That's charging cost?

Zoherb Begg: No, just for that favour.

ASP Tevita Naodele: What come to your mind when this, when he, he says those things to you?

Zoherb Begg: Ummm I was broke and don't have any money so I said okay. So ah at some point there I thought nothing was gonna come because previous, he never mentioned anything or dint say anything.

ASP Tevita Naodele: Did you record something, did you have any proof that you talking about this dealing of ?

Zoherb Begg: I do have thing on my phone.

ASP Tevita Naodele: Come again

Zoherb Begg: I do have our conversation on my phone.

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ASP Tevita Naodele: So what number, how many numbers did he have?

Zoherb Begg: Ah his got that one as far as I know.

ASP Tevita Naodele: Is that the same number he use texting you?

Zoherb Begg: Yes sir.

ASP Tevita Naodele: Can you show that text to me ah to us?

Zoherb Begg: Yes sir.

ASP Tevita Naodele: The proof of what you are saying.

Zoherb Begg: Yes sir.

ASP Tevita Naodele: Okay can you go for break now?

Zoherb Begg: Yes sir.

Disk 3,Part 2 ,Page 2

ASP Tevita Naodele: Can you show to us, read it to us what's the conversation about on the viber?

Zoherb Begg: Okay just regarding the ID card.

ASP Tevita Naodele: On the 3rd.....on the 1st of

Zoherb Begg: 3rd of January

ASP Tevita Naodele: 3rd of January, can you start reading what the conversation was all about?

Zoherb Begg: 7.22am he messages me, you just send me an ID of yours.....and the TIN number now and he goes I bring a package which I wasn't sure. That is what he meant and he goes, you thousand dollars and 7G

ASP Tevita Naodele: Can I have a look into the conversation?

Zoherb Begg: Sure

ASP Tevita Naodele: So this conversation was on the 3rd of January 2023?

Zoherb Begg: Yes sir.

ASP Tevita Naodele: So you reply back to him I trust you bhai

Zoherb Begg: Hmmm because he was going to give me money and

ASP Tevita Naodele: Send quick I need to give you now. So there is a passport.

Zoherb Begg: Yes.

Disk 4, part 1, page 11

Zoherb Begg: Err as soon as I walked out the front door, I was arrested by Officer Ben and thn he took me to the side of the Building, he asked me who else was with me.....he addressed me first that these believes to be illegal drugs so..... and he asked me that who else is with me, accompanying with you DHL err straight away I advised him that my

cousin Imran Khan who's the original owner of this one package, he is with me in the vehicle and err his associate Ratu Meli but sir my whole point is if this package.

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Zoherb Begg: But Sir its someone else's package, I have shown you guys evidence and everything but I do understand it was my mistake for providing my cousin with my ID and my details and I wasn't aware of what came in the package. And I gave to my cousin he is.....he would try to blame as well but I have came up clean and I showed you guys evidence, I showed you guys all the text messages and recordings on the phone and photos. I have provided as much evidence I could from my side to prove that that is not my content, not my....

Sergeant Paula: Now we are, we have come to the end of this interview.

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Zoherb Begg: Yes sir. Sir just one question erm my cousin he will be prosecuted an regards to this parcel as well as.....like as I have provided all the information and everything and I have told you guys about all his drug dealings and offences andthings he has committed

ASP Tevita Naodele: Yeah

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Zoherb Begg: Like he is the main guy. If you guys can get him out, put him away from the streets, I'llit will..... in this country it will impact and it will clean up the streets around, it will get a lot of drugs off the street and it will save a lot of people.

ASP Tevita Naodele: yeah right, thank you

68. From this caution interview I find that, instead of a mere denial, the accused informed the police that his cousin, *Imran Khan*, had requested his TIN and ID to bring a parcel from abroad in exchange for \$1,000 and some drugs on 03/01/2023. The accused supplied these details hoping to receive the money and drugs. Later, on 07/02/2023, after receiving a call, the accused went with Imran to collect the parcel and was arrested by the police while leaving the DHL office.

69. If I accept this version of the accused as stated in his caution interview , it would first show that the parcel was brought to the Fiji by a third party (Imran) using the name and other details of the accused.

70. Secondly, it would shows the accused was not aware about the content of the parcel when it was brought to the Fiji and also did not have the knowledge when he uplifted it from the DHL office at Reivaqaqa.

71. During the interview, the accused showed Viber messages exchanged between him and Imran to PW11 and the witnessing officer regarding these transaction . PW11, in his testimony, confirmed having seen these messages.

72. The prosecution witnesses also confirmed that Imran is known to them as a drug dealer and that he was arrested ,interviewed and charged in MC 6. However, a check of the registry shows that Imran was charged with possession of 4.12 grams of drugs (CF 197/2023), which is not connected to this matter.

73. I note that even though the accused informed the police of Imran's involvement in these offenses, it appears that the police failed to investigate him about that .

74. In fact, during cross-examination, the Investigating Officer (PW11) admitted that they did not investigate this claim and charged the accused solely because the package was sent in his name.

75. This failure to properly investigate the version of events advanced by the accused, as supported by his Viber messages, has created reasonable doubt on several grounds.

76. Firstly, I find that reasonable doubt exists as to whether it was the accused who imported the parcel into Fiji from the United States, or whether it was his cousin who did so using the accused's TIN and other personal details.

77. Secondly, I find that there is reasonable doubt as to whether the accused was aware of the contents of the parcel imported under his name.

78. Thirdly, there is reasonable doubt as to whether the accused knew the contents of the parcel at the time he took possession of it from the DHL office.

79. Accordingly, I find the accused not guilty on both counts and acquit him..

80. 28 days to appeal.

