

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**LEON KATHY
RESNICK TAIVA
NANO RUREK**

Mr Justice Oliver A. Saksak

Mr P. Wirrick for Public Prosecutor
Mr James Tari for Defendants

Date of Hearing: 17th September 2012
Date of Sentence: 7th February 2013

SENTENCE

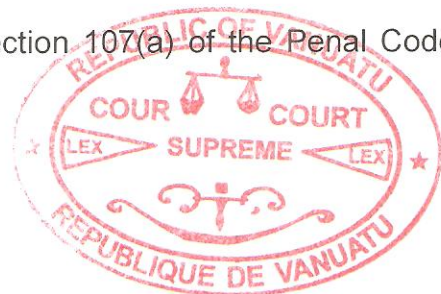
1. On 10th August 2012 all three of you pleaded guilty as follows:-

(a) Leon Kathy –

- (i) Counts 1 and 7 – Carrying Firearms in a Public Place – Section 29 of Firearms Act Cap. 198 (the Firearms Act).
- (ii) Counts 2 and 6 – Possession of Firearm with Intent to Injure – Section 26 of Firearms Act.
- (iii) Count 5 – Drunk & Disorderly in Possession of Firearm – Section 25 of Firearms Act; and
- (iv) Count 8 – Unlawful Possession of Firearms – Section 3(a) of Firearms Act.

(b) Resnick Taiva –

- (i) Count 3 – Malicious Damage to Property – Section 133 of the Penal Code Act Cap 135.
- (ii) Count 4 – Intentional Assault – Section 107(a) of the Penal Code Act.



(c) Leon Kathy and Nano Rurek (Jointly) –

- (i) Count 9 – Obstructing Police Officers – Section 73A of the Penal Code Act; and
- (ii) Count 10 – Malicious Damage To Property – Section 133 of the Penal Code Act.

2. The following are the maximum penalties, Parliament has imposed for the offences as charged under Section 40 of the Firearms Act.

- (i) Carrying Loaded Firearm in Public Place – Section 29 – Fine not exceeding VT250.000 or imprisonment not exceeding 5 years or to both.
- (ii) Possession of Firearm with Intent to Endanger Human Life – Section 26 – Fine not exceeding VT750.000 or imprisonment for a period not exceeding 15 years or to both.
- (iii) Being Drunk and Behaving in a disorderly manner while carrying Firearm – Section 25 = Fine not exceeding VT100.000 or imprisonment for a period not exceeding 2 years or to both.
- (iv) Possessing Firearm Without Licence – Section 3 = Fine not exceeding VT20.000 or imprisonment not exceeding 6 months or to both.
- (v) Malicious Damage to Property, Section 133 of Cap 135 = Fine not exceeding VT5.000 or imprisonment not exceeding 1 year or to both.
- (vi) Intentional Assault, Section 107(a) of Cap 135 = Imprisonment for 3 months.
- (vii) Obstructing Police Officers, Section 73A of Cap 135 = Fine not exceeding VT300.000 or imprisonment not exceeding 6 years or to both.



3. From these various penalties it is apparent that, except for Malicious Damage to Property (Counts 3 and 10), Intentional Assault under Section 107(a) (Count 4) and Possessing Firearm without a Licence (Count 8), the offences committed in Counts 1, 2, 5, 6, 7, 8 and 9 are serious offences.

4. The facts as presented by the Prosecutor are as follows –
 1. The offences were committed during the night of the 1st of December 2011, after the formation of the SANMA Provincial Council. At this time different successful and unsuccessful election candidates and their followers were generally in a celebratory or unhappy mood depending on the results of the elections and the forming of the provincial council. As evening came on this date alcohol and kava was consumed by the Defendants and their group and the Complainants and their group.

 2. One of the Complainants, Roger Rocroc, drove his transport truck with a group of men during the evening of 1 December 2011 from Luganville to Port Olry village to drop off some of the men at Port Olry and drink kava together at the village. While driving towards Port Olry this complainant noticed Leon Kathy Warsal's truck also drive pass the nakamal they were at. At or near the nakamal at Port Olry some provocative words were exchanged between both groups.

 3. Roger Rocroc and his group drove their truck to Horo Store and stopped. Shortly after stopping Leon Kathy Warsal stopped his truck behind Roger Rocroc's truck and kept the engine running. Roger Rocroc alighted from the driver's seat and stood outside his truck. At this time Leon Kathy Warsal came out of his truck and walked towards Roger Rocroc holding a 20 guage rifle, which, at that time was not loaded. Leon Kathy Warsal then said words to the effect to Roger Rocroc and his group. *"Yu ting se kraon blong yu long ples ia! Yu wantem se me blowemaot brain blo yu naoia!"* While saying this Leon Kathy Warsal pointed the rifle into Roger Rocroc's left shoulder.



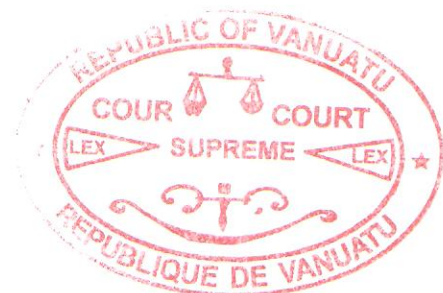
4. During this time Resnick Taiva punched the passenger-side window of Roger Rocroc's truck causing it to break. Resnick Taiva also punched one Nelson Nial but this assault did not cause any injuries. At all material times Leon Kathy Warsal did not have a valid license to possess the rifle. The Defendants then left the scene in their truck and not long after that the Complainant Roger Rocroc and his group also drove away towards Hog Harbour.

5. The Defendants drove back to Luganville and reached Luganville at around 11:00 pm. At this time police officers John Berry and Joelly Daniel were on duty at the Police Station. Due to some provocative actions between both groups while driving into and around Luganville, Leon Kathy Warsal walked into the police station holding his rifle and Nano Rurek walked into the police station holding a metal pipe. Once inside the station the three Defendants demanded that the police officers go and arrest Silas and Roger Rocroc's group who they allege had assaulted them. The police officers tried to calm them down and tell the Defendants that they would investigate but the Defendant were uncooperative and became violent-particularly due to the influence of alcohol and the angry state the Defendants were in due to the alleged actions of the Complainant's group earlier that night.

6. Inside the police station, the Defendant Nano Rurek hit a table with the metal pipe causing damage to it. Nano Rurek then assaulted police officer John Berry by punching him in the face causing him to fall down. Nano Rurek then attempted to hit police officer Joelly Daniel in his chest before hitting the table again with the metal pipe. During this time Leon Kathy Warsal hit a table with the butt of his rifle causing damage to the table and also pointed the rifle at both police officers while demanding they arrest Silas Rocroc's group. Leo Kathy Warsal said words to the two police officers to the effect that if they did not do what he demanded he would "*fakem tufala wetem masket.*" At this time the rifle was not loaded.



7. During this time the police officers smelt alcohol coming from the Defendants. The Defendants were arrested the following day. The damage caused by the Defendants to the police station furniture is visible from photos "3-5" contained in the P.I. Bundle. The damage caused to Roger Rocroc's truck window is shown in the first two photographs of "Book 1".
8. Those facts are accepted by the defendants. They show the following aggravating features which add seriousness to your offendings –
- (i) The offendings were done by all three of you acting together.
 - (ii) All three of you were intoxicated during the commission of these offences.
 - (iii) Human lives were threatened with the rifle and a piece of metallic pipe by Nano Rurek.
 - (iv) Firearm offences and damage to property were done in front of police officers without self-restraint displaying a lack of respect for the law and law enforcement officers.
 - (v) Damage done to the property of the State and to the vehicle of Roger Rocroc.
9. Due to these aggravating features, it is necessary for the Court to impose sentences that will act as –
- (a) Deterrence for all three of you and for others;
 - (b) Marking the gravity of these offences;
 - (c) Marking public disapproval and denunciation of your behaviour; and
 - (d) Adequate and appropriate punishment.
- Sentences of fines and imprisonment are therefore appropriate punishments the Court will impose.



10. The Court is assisted by the Case of Henry Moli v. Public Prosecutor Criminal Appeal Case Nol. 6 of 2011 to impose custodial but suspended sentences on Leon Kathy for the firearms offences.

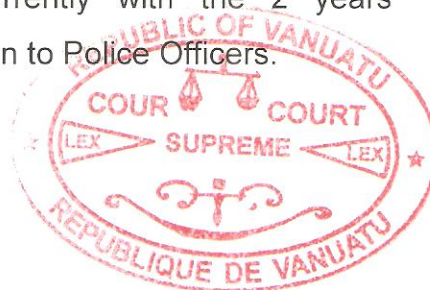
11. I acknowledge from the facts as presented in the Pre-Sentence Reports that there was some of provocation or abuses which gave rise to the defendants taking these actions, however it is obvious the actions of the defendants went far beyond what would reasonably be accepted as reasonable. In essence, the defendants had taken the law into their own hands and by their actions caused a breach of the peace. Their actions can never be condoned and were uncalled for under any circumstances.

12. There has been no reconciliation although it appears Leon Kathy made a formal apology to the Police at some point. But in the Vanuatu Society an apology by itself is never adequate to show remorse and to restore broken relationships and make amends for actions which were clearly unlawful.

13. For the foregoing reasons the Court hereby convicts defendants Leon Kathy, Resnick Taiva and Nano Rurek and sentences them as follows:-

(a) Nano Rurek –

- (i) For Obstructing Police Officers – 2 years imprisonment but suspended under Section 57 of the Act for a period of 3 years from the date hereof on condition that you do not re-offend or commit any other criminal offences for which you are charged. If you do, you will automatically go to prison for 2 years as imposed.
- (ii) For Malicious Damage to Property – 6 months imprisonment but this is also suspended on the same conditions as imposed in relation to the offence of Obstruction to Police Officers. Further, I order that this be served concurrently with the 2 years imprisonment imposed for Obstruction to Police Officers.



(b) Resnick Taiva –

- (i) For Malicious Damage to Property – 6 months imprisonment but suspended for a period of 2 years on condition that you do not re-offend or commit any other criminal offences for which you are charged. If you do, you will automatically go to prison for 6 months as imposed.

- (ii) For Intentional Assault – You are sentenced to 1 month imprisonment but this is also suspended on the same conditions imposed in respect to Damage to Property. Further I order that, this sentence be served concurrently with your 6 months imprisonment for Damage to Property.

(c) Leon Kathy –

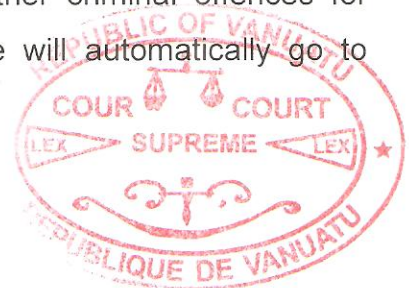
- (i) For 2 Counts of Possession of Firearms With Intent to Injure (Counts 2 and 6) – Imprisonment for 24 months on each Count to be served concurrently.

- (ii) For 2 Counts of Carrying Firearms in a Public Place (Counts 1 & 7) – Imprisonment for 12 months on each Count to be served concurrently.

- (iii) For Drink and Disorderly while Carrying Firearm (Count 5) – Imprisonment for 12 months.

- (iv) For Unlawful Possession of Firearms (Count 8) – Imprisonment for 3 months.

I order that all these sentences be served concurrently for a total of 24 months. I further order that these concurrent sentence of 24 months imprisonment be suspended for a period of 3 years under Section 57 of the Act on the conditions that the defendant must not re-offend or commit any other criminal offences for which he is charged. If he does, he will automatically go to prison for 24 months.



- (v) For obstructing Police Officers – A Fine of VT45.000 payable within 1 month from today and in default, imprisonment for 5 months.

- (vi) For Malicious Damage to Property – A Fine of VT5.000 today or in default, imprisonment for 1 month.

14. Those are the Sentences of the Court. Each of you has a right of appeal against Sentence within 14 days if you so choose.

DATED at Luganville this 7th day of February 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

