

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 201 of 2019

[CRIMINAL JURISDICTION]

STATE

V

1. WAISAKE RABUATOKA TOKADUADUA

2. SK (JUVENILE)

Counsel : Mr. E. Samisoni for State
Ms. L. David for the 1st Accused & the Juvenile

Date of Sentence : 25 November 2019

[The name of the juvenile offender is suppressed. Accordingly, the juvenile will be referred to as "SK". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said juvenile.]

PUNISHMENT

1. **SK** you have pleaded guilty to the charges produced below and were found guilty as charged accordingly;

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISAKE RABUATOKA TOKADUADUA and SK, with another, on the 18th day of May, 2019 at Lami in the Central Division, in the

company of each other, entered as trespassers into **RB PATEL SUPERMARKET - HARBOUR POINT**, with the intent to commit theft.

SECOND COUNT

Statement of Offence

THEFT: contrary to section 291 (1) of the Crimes Act 2009.

Particulars of Offence

WAISAKE RABUATOKA TOKADUADUA and SK, with another, on the 18th day of May, 2019 at Lami in the Central Division, in the company of each other, dishonestly appropriated (stole) 3x 700ml bottles of Coruba rum, 2x 1 litre bottles of Bombay Sapphire gin, 1x 700ml bottle of Johnnie Walker whisky and 1x 700ml bottle of Smirnoff vodka, the property of **RB PATEL SUPERMARKET - HARBOUR POINT** with the intention of permanently depriving **RB PATEL SUPERMARKET - HARBOUR POINT** of the said property.

2. You have admitted the following summary of facts;

***Accused: (A1)** Waisake Rabuatoka Tokaduadua, 20 years old, student of Suvavou village, Lami.*

***Juvenile: (J1)** SK, 17 years old, unemployed of Suvavou village, Lami. (**Birth Certificate attached as Annexure 1**).*

***Complainants: (PW1)** Saula Roko, 32 years old, supervisor of RB Patel Supermarket – Lami.*

***(PW2)** Torika Saumatua, 31 years old, IT personnel at RB Patel Supermarket – Lami.*

***(PW3)** Jeremaia Vesikula, 28 years old, taxi driver at Tiko Kece Taxis.*

***(PW4)** Jovilisi Seruvakula, 35 years old, taxi operator of Tiko Kece Taxis.*

***(PW5)** Semi Niobalavu, 20 years old, USP student of Suvavou village, Lami.*

1. On 18 May, 2019 at around 3am at the RB Complex at Harbour Point Lami, PW3 and PW4 were on duty at the Tiko Kece Taxi base there, when they saw two people at the RB Patel Supermarket main door. They saw one of the two standing on the shoulders of the other, opened some louvre blades and take out something from RB Patel Supermarket. They then saw the two persons walk away towards the seawall holding something in their hands. They confirmed that these two people were both itaukei and that a third person was standing at a nearby tree as a lookout.

2. *PW5 said that after 2am on date of the incident, he was walking with a friend to the Tiko Kece Taxi base at Harbour Point to buy cigarette rolls when he saw two people at the veranda of the RB Patel Supermarket. One was crouching down, while the other was standing on his back in order to put his hand inside a window of the supermarket. PW5 recognised the two people as A1 and J1 as he had known them his whole life.*
3. *After investigations were completed by Police, A1 and J1 were arrested and interviewed under caution where they both admitted to the offences as charged. A1 admitted at Q&A 43 – 66 that he was with J1 and another and that they planned to break into RB Patel Supermarket. A1 said that he and J1 went to the main door of the supermarket, removed two louvre blades and stole four bottles of liquor – two bottles of Bombay Sapphire and two bottles of Coruba rum whilst a third person stood watch. J1 made similar admissions at Q&A 45 – 62 that he and A1 broke into the supermarket as they did not have any cash to buy drinks. A1 stood on J1's shoulder, removed two louvre blades and stole four bottles of alcohol while a third person stood watch nearby.*

The Records of Interview for A1 and J1 are attached as Annexure 2.

4. *At around 7.45am on the same day, PW1 arrived at work only to discover that the supermarket had been burgled. PW1 then informed PW2 to conduct a stocktake and it was revealed that the following bottles of alcohol were missing:*
 - i) *2x 1litre Bombay Sapphire gin;*
 - ii) *3x 700ml Coruba rum;*
 - iii) *1x 700ml Johnnie Walker Whisky; and*
 - iv) *1x 700ml Shirnoff Vodka.*

The stolen bottles of alcohol were not recovered.

The Stocktake inventory is attached as Annexure 3.

5. *On 2nd August, 2019, A1 and J1 pleaded guilty as charged to both counts of Aggravated Burglary and Theft in the presence of their counsel.*
3. You are 17 years old and a first offender. It is submitted that you were persuaded by the co-offender who was not charged to commit the offences. You have entered an early guilty plea. You have cooperated with the police. These factors would be considered as your mitigating factors.

4. The fact that there was preplanning as reflected in the summary of facts is an aggravating factor in this case.
5. The complainant has been fully restituted but by the co-accused. You or your parents did not contribute.
6. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [See *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
7. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
8. Section 30 of the Juveniles Act reads thus;

Restrictions on punishment of juveniles

30.- (1) No child shall be ordered to be imprisoned for any offence.

(2) No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

(3) A young person shall not be ordered to be imprisoned for more than two years for any offence.

9. You are a young person according to the provisions of the Juveniles Act. In terms of the provisions of section 30(3) of the Juveniles Act a young person can be ordered to be imprisoned for a period up to 2 years, but in terms of section 30(2) of the said Act such order for imprisonment should only be made if the

court finds that the said offender is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

10. You were detained at the Boys' Centre from 22/05/19 to 31/10/19; for a period of 05 months and 09 days.
11. I consider the above period of detention as a suitable punishment as far as detention is concerned.
12. I would further order that your father should pay a fine of \$100 in terms of section 32(1)(c) of the Juveniles Act.
13. This fine is ordered considering the fact that your parents have failed to discharge their duties and responsibilities towards you in guiding you in the correct path and the fact that you did not take part in restituting the complainant.
14. Accordingly, you will be released today. You are thoroughly warned and are hereby advised to hereafter abide by the laws in this country and lead a good life. The fine should be paid at the High Court Registry on or before 24/02/20.
15. Thirty (30) days to appeal to the Court of Appeal.

Vinsent S. Perera
JUDGE

Solicitors:
Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Juvenile