

IN THE MAGISTRATES COURT OF JUSTICE

[CRIMINAL JURISDICTION]

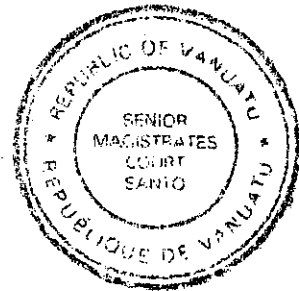
CR # 145/2003

**PUBLIC PROSECUTOR – VS – ROGER TOKON  
GERALD MARCEL**

Luganville, Santo: J. SINGOMAT, Senior Magistrate  
2003: 24<sup>th</sup>, 29<sup>th</sup> July

CRIMINAL LAW: Unlawful Entry, Malicious Damage, Theft.  
: circumstantial Evidence over-whelming.  
- not guilty plea – Trial – Sentences call for deterrence.

Mr. Gray Vuke for the State Prosecutor.  
Defendants each appear in person.



**JUDGMENT**

29<sup>th</sup> July, 2003.

J. SINGOMAT: You both pleaded not guilty of the offences alleged of you. These offences (above) carry years of imprisonment terms. The offence of Unlawful entry carries a penalty of 10 years, while for the offences of Malicious Damage and Theft the penalties are 10 years and 12 years respectively.

For the Prosecution case, there were two Teachers of the Santo East School and two police witnesses who were involved in the investigations of the incident at the school. The teachers testified on the evidence of damage and theft. It means some persons had gone to the school on the night of 4<sup>th</sup> September 2003. So a formal complaint had been lodged with the police and the two policemen who testified, gave evidence of their involvement in the Break Enter and stealing case at Santo East School.

All four (4) of the Prosecution witnesses gave evidence that there was really an incident which took place at the named school on the date specified.

On the 10<sup>th</sup> of September, 2002, defendants Roger Tokon and Gerald Marcel were arrested by police. Infact, Roger was arrested several hours earlier (6.00 am) than Gerald (12.00 mid-day) at their separate places of residence.



Police obtained confessional statements from both the defendants exhibits (1) and (2) (ie exhibit (1) for Gerald Marcel and exhibit (2) for Roger Tokon).

According to the Prosecution evidence (police witnesses), the defendant, Gerald Marcel was arrested only after Roger Tokon (co-defendant) gave police his name (Marcel) as a co-suspect at the time of the arrest. Defendant, Marcel tried to suggest in his testimony that he was arrested for another complaint against him, a fact which the Court will at this time not accept because there had been no other evidence of Marcel's claim.

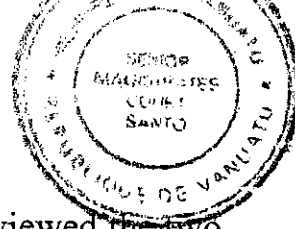
Gerald Marcel did the plan for the Break and Enter at the school. It was related quite clearly to the Police Investigating Officer, Frank Yaka. For instance, having made the plan, Marcel met Tokon at the Santo Sports Club premise and they discussed the plan. Eventually it was carried out.

There is before this Court allegations of threat of violence and inducements made against the police arresting Officers and also the interviewing officer. The defendant, Roger Tokon described how certain police officers physically and verbally assaulted and threatened him at the C.I.D office. He further alleged that he was offered smoke if he admitted to committing the offences. Roger Tokon concluded that he never knew the whole incident but he was told of the incident by the police interviewing officer himself. AT the end of the interview, Roger Tokon signed the statement as he was under a real threat. The Court refuses to accept such allegations. I will discuss in details later on why such allegations are not true.

Then Gerald Marcel gave his testimony. He was arrested and taken to the same office and was interviewed by the same C.I.D Officer. Gerald was not offered any smoke for his admission. However, he alleged that he was physically assaulted and abused by the arresting officers. Gerald gave very similar allegations as the earlier interviewee, Roger Tokon. Gerald complained of been hit to the floor an then taken by the interviewing officer to be interviewed. As stated earlier, no smoke was offered for admitting his involvement in the incident. These allegations I would refuse to accept . Again I will discuss reasons latter.

The next witness for the defendants was one, Moses Kilton. He was in the police cell (6) since 01<sup>st</sup> September, 2002. His arrest followed from the Break and Enter and unlawful wounding incident at LCC Store, Santo.

Kilton said the defendants are his nephews and he knew them quite well as such. This witness told the Court that he was taken into the C.I.D Officers office to continue the series of interview he was going through with the police over the LCC incident and on the 11<sup>th</sup> September, 2002.



His interrogating Officer was the very same officer who interviewed the two defendants (above). Such an interview was done in the same office too.

Moses Kilton in his testimony made mention of been offered a cigarette (same brand of smoke described by Roger Tokon) and he did smoke the same. Moses never told the Court that the police Officer used such similar inducement to obtain confessions otherwise from him (Kilton) over the LCC case. Moses Kilton is currently a detainee in Santo prison.

This witness gave evidence to infact mislead the Court. It is not proper to accept such allegation from a witness who testifies in Court with no real basis of allegations. Kilton said he was arrested by the same policemen who arrested the two defendants. He also did not make mention of similar threats of violence and abuses used on his person at the time of his arrest.

Under the circumstances of this case it is the Courts humble view that the two defendants and Moses Kilton had spent time together discussing their stories to come to Court with. For instance, Kilton and Tokon had seen packet of smoke on the table in the office and that Marcel saw only empty packet of smoke in the rubbish basket in that office.

Allegations, of not been given caution before the interview is also quite untrue. Both Roger and Gerald had requested through this Court to get a legal Counsel and were given the chance. To this day both have not got any lawyer. Roger has 6 previous criminal convictions before the Courts in Santo.

Defendant Marcel had appeared in Court before as he claimed in his allegations. Defendant, Roger Tokon said and he understood that he should be cautioned before been interviewed . He said he refused to talk but he talked with the interviewing officer because Tokon was to be given to the Policemen and be assaulted if he did not talk. This is quite untrue because Tokon was to be given to the policemen and be assaulted if he did not talk. This is quite untrue because there was no immediate danger to his life.

The witness Kilton Moses and both defendants gave conflicting evidence of having shower. It is quite hard to believe that all three were in the same cell (6) and they have given such conflicting evidence. For instance, Kilton only had one shower during the period of more than one (1) month. On the other hand, the defendants said they had showers about three times each.

Witness Kilton for the defendants did not know which officers were asked by the defendants to be taken to the hospital for medical attention while in the cell (6) though he said the defendants were refused medical treatment.

The defendants on the other hand give names of police officers who they (defendants) requested to be taken to the hospital in Santo.

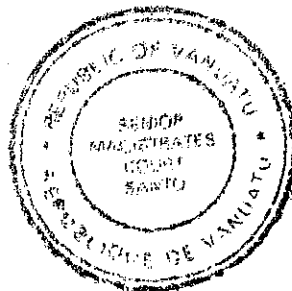
In the light of the circumstances of this case I would find both defendants guilty. Having considered sentencing options I do impose the following sentences.

You Roger Tokon, you are a second offender, I imprison you for three (3) years for Unlawful Entry. For Malicious Damage and Theft I imprison you to 6 months and 3 months respectively. These sentences shall be concurrent to 3 years sentence.

You, Gerald Marcel, you are a first offender I imprison you to 1 ½ years prison sentence. For the charges of Malicious Damage and Theft I imprison you to 6 months and 3 months respectively. There is an upsurge in the similar offences in Santo Town. Moreover, you planned the incident and carried it out with a known criminal in Roger Tokon. You both are from Ambrym. You knew Roger quite well. This is a deterrent sentence. Sentences be concurrent to 1 ½ years sentence.

Then you both will pay VT12,500 each (total VT25,000) to the Santo East School for damage done to the School.

DATED at Luganville, this 29<sup>th</sup> day of July, 2003.



A handwritten signature in black ink, appearing to read "Singomat".

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**JEREMIAH SINGOMAT**  
Senior Magistrate