

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

Criminal Case No. 05 of 2015

**PUBLIC PROSECUTOR – VS – FREDSON LEO**

**Before:** *Justice Chetwynd*

**Counsel:** *Mr Ken Massing for the Public Prosecutor  
Ms Jane Tari for the Defendant*

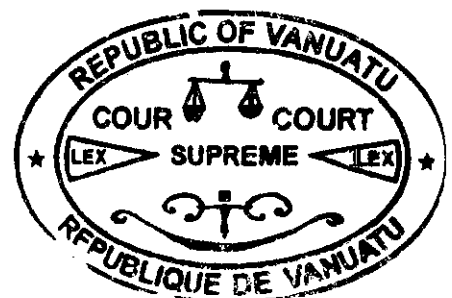
**Date of Decision:** *7<sup>th</sup> March 2016*

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**DECISION ON VOIR DIRE**

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1. The Defendant was arrested on 28<sup>th</sup> November 2014. He was taken to Santo Police Station to be processed. He was subsequently taken to the Correctional Centre in Luganville and held in custody there. On the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> December he was interviewed by Police Constable Paula Zebedee in the presence of another officer. The interviews took place at the Correctional Centre. The Defendant says he did not make the statements voluntarily. He says he was assaulted by PC Paula Zebedee when he was first taken to the Police Station on 28<sup>th</sup> November 2014.
2. The Defendant says that when he was taken into the Police Station on 28<sup>th</sup> November 2014 PC Paula Zebedee slapped him on the back of the head, then on his fore-head and then each 5 times by putting his hands together at the side of his head. The blows were hard enough to cause bleeding from his nose and mouth.
3. It is for prosecution to prove beyond reasonable doubt that the statements P Z1, PZ2, PZ3 and PZ4 were given voluntarily. I heard evidence from Police Constable Paula Zebedee, Police Constable David Bong, Police Constable Bule J'n'r and Police Constable Clovis Fabiano.

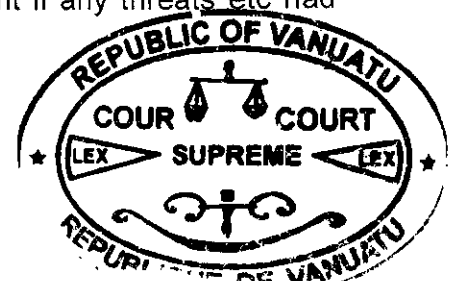


4. P C David Bong says he actually carried out the arrest of the Defendant. The officer had gone with PC Zebedee, PC Bule and Sergeant Aru by Police Truck to Defendant's home. He and PC Zebedee went into Defendant's yard and arrested him. They brought to the truck and then they all went to Police Station. At the station he searched the Defendant and PC Zebedee entered details in the Watch House Register. He demonstrated how the Defendant was standing facing a wall with his hands against the wall. The Defendant then went to cell 6 and was kept there. He did not see PC Zebedee assault the Defendant. He said he put the Defendant in cell 6 and he knows nothing of any assault. He did not see blood on the Defendant.

5. PC Bule said he was in the police truck when it went to the Defendant's home. He confirmed that he, Sgt Aru, PC Zebedee and PC Bong travelled in the truck. The Defendant was arrested and brought to the Police Station. When the Defendant was first arrested he and Sgt Aru stayed in the truck and did not accompany PC's Zebedee and Bong. When they first arrived Police Station he did not immediately go in but he did go in whilst Sgt Bong was patting the Defendant down. He saw that although his description was slightly different than that of PC Bong. He did not make a statement at the time but his recollection is good because the Defendant is his small papa or uncle and he remembered the evening well.

6. PC Clovis was on duty that night. He passed by the Defendant, PC Zebedee and PC Bong. He was answering a phone. He saw PC Bong with the Defendant and PC Zebedee writing in the Watch House Register. He was only in the vicinity for a short while. He later was a corroborating officer during the caution interview which took place on 3<sup>rd</sup> December 2014.

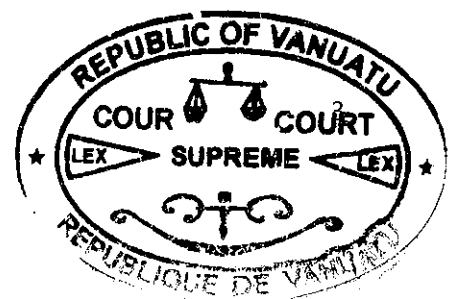
7. PC Zebedee confirmed the early process and agrees he and PC Bong took Defendant into the Police Station. He denies assaulting the Defendant in any way. PC Bong was searching the Defendant and he, PC Zebedee, was sat the other side of a small table or desk writing in the Watch House register. He saw no blood on the Defendant at any time. He did not strike the Defendant at any time. When the statements under caution were written he asked the Defendant if any threats etc had



been made. The question he asked was, "Yu agree se ino bin kat eni threats, force or promise ikam long yu blong yu part take long R.O.I. ia". The same question was asked during each of the four interviews. On 3<sup>rd</sup> December 2014 the answer recorded is "nokat". On 4<sup>th</sup> December 2014 the answer to the same question was "No inokat". On 5<sup>th</sup> December 2014 the answer to the question is recorded as "No" and on 6<sup>th</sup> December 2014 the answer to the same question also "No". Despite those recorded answers on 5<sup>th</sup> and 6<sup>th</sup> December 2014 which seem to suggest the Defendant was not agreeing PC Zebedee was sure the Defendant was actually agreeing and saying there had been no threats made, no force used and no promises made.

8. The Defendant says he was arrested by the Police and taken to Police Station. He had never been arrested before. When in the Police Station PC Zebedee slapped and assaulted him as previously described. He was adamant that the blows were hard enough to cause him to bleed. He says they caused pain for at least a month. He confirmed in evidence that he had not reported the assault to anyone, not to anyone at the Correctional Centre, not to his lawyer when the bail application on 10<sup>th</sup> December 2014 was made and he did not seek medical attention after he was released. I bear in mind the Defendant does not have to prove anything.

9. I accept the evidence of the Police Officers. The Prosecution has established beyond reasonable doubt that the statements were given voluntarily. They are admissible in evidence. I do not accept their evidence is flawed because they have not produced the Watch House register or any other documents which detail the arrest and detention of the Defendant. If these documents were required or if any records were needed by the Defendant the Prosecution should have been informed and arrangements could have been made for them to be examined by defence counsel and admitted into evidence if necessary. Whilst I accept a request might have been made to look at these documents that is not the same as the defence making a formal request for their production. If that had been refused I could have made orders requiring their production in court. In any event the various officers giving evidence said

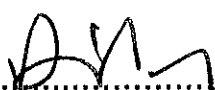


they could be brought from the Police Station if required. That offer was not followed up by the defence.

10. No other facts or information such as would lead me to exercise any residual discretion to exclude the statements have been put forward.

DATED at Luganville this 7<sup>th</sup> day of March 2016.

BY THE COURT

  
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DAVID CHETWYND  
Judge

