

IN THE SUPREME COURT OF WESTERN SAMOAHELD AT APIAS. 14/94BETWEEN: THE POLICEInformantA N D: HAWAII LAVEA of
MoataaDefendantCounsel: M. Edwards for prosecution
T. Malifa for accusedHearing: 21 & 22 July 1994Judgment: 25 July 1994

JUDGMENT OF SAPOLU, CJ

The accused is charged that at Vini-fou on the 8th day of January he did rob the victim of US\$60. Essentially the offence of robbery consists of theft accompanied by violence or threats of violence used to overcome resistance to property being stolen or to extort the property stolen. The elements of the offence of theft such as a fraudulent or dishonest taking and an intention to deprive the owner permanently of his property as provided under section 85 of the Crimes Ordinance 1961 have also to be proved.

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In this case the prosecution relies primarily on circumstantial evidence to prove the elements of the charge. According to the witness Aukuso Tofa, a police constable called by the prosecution, he has been acquainted with the accused for quite some time. In the late afternoon of Saturday, the 8th of January this year, he was at the party held by his Apia rugby club at Malifa and he observed the accused at that party. At about 7.00pm or 7.30pm he left the party together with the accused and some other people and the accused said he was going to the hospital. The accused then left for the hospital. Aukuso Tofa says he, himself, then went home and changed and then went to the Mt Vaea Nite Club with some boys of his village. At about 10.00pm while he was still inside the Mt Vaea Nite Club, Aukuso Tofa noticed the accused entering the Mt Vaea Nite Club with another boy of Aukuso's village. The accused and that boy then came and stood together with Aukuso. After a short while, Aukuso says the accused and his mate then told him they were going to the Margeritas Nite Club and that was the last time he saw the accused that night.

According to another witness Lui Tenari, called by the prosecution, he was working as a doorkeeper at the Mt Vaea Nite Club on Saturday night, the 8th of January this year, when he observed the victim, an old white man, coming to the Nite Club. He says he is familiar with the victim's face and he told his fellow-employees at the door to let in the victim without paying for a

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cover-charge. At about 11.45pm, Lui Tenari says he saw the victim leaving the Mt Vaea Nite Club with another man. The victim at that time appeared drunk and the man accompanying him was a little taller than victim and wearing a white top and a pair of trousers.

The victim's account is that he came from American Samoa to Apia to do some printing work as he is a printer by trade. On Saturday evening, the 8th of January this year, he went for drinks. He went first to three different nite clubs before he went to the Mt Vaea Nite Club. After two drinks, he decided to leave the Mt Vaea Nite Club to go to the RSA Club. So he came out of the Mt Vaea and got into what appeared a greenish taxi and told the driver to take him to the RSA Club. As the taxi was about to drive off, three people got into the taxi. Apparently the victim was sitting in the front seat and one of these people grabbed him from behind around the neck and told the driver to take the victim to Vini-fou. The victim says he was assaulted at Vini-fou and left there. He also says that when the taxi stopped at Vini-fou, one of the guys with him in the taxi grabbed him around the neck from behind while another guy opened the front door and dragged him out. It was not until they arrived at what appeared to be a ditch that he realised where he was and that he was injured. He was unconscious for about 15 minutes. His glasses and false teeth were damaged and his assailants took the US\$50 to US\$60 he had. He had \$10 and \$20 US dollar notes. He says the leader of his assailants

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had a good physique but he could not identify him.

The prosecution also called Mesi Ieremia, a registered nurse, but now attending Malua Theological College with her husband. Her evidence is that after watching video on the night in question, she played cards with her husband and mother-in-law. After 11.00pm a taxi entered their family's compound and stopped near a breadfruit tree. After a short while, she went to see who were in the taxi. She approached the taxi and stood at the rear. At that time the parking lights and the lights inside the taxi were on. Both doors on one side of the taxi were opened and she observed the accused trying to pull out an old white man who was seated in the front seat, but the old white man was holding on to something inside the taxi. Mesi Ieremia says when she knew it was the accused, she then returned to her house. And when her family asked her who it was she said it was the accused. Now this witness says she knows the accused very well as he normally visits her family as her husband is related to the accused. However, since this incident the accused has never again visited her family. The accused also lives around the same area as the present witness.

Mesi Ieremia also says that the colour of the taxi was blue but it was dark at the time. She also recalls that the accused was wearing a blue shirt and black trousers. She further says that after the taxi left, she came out of her house again and that was

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when she met the girl by the name of Va Sale. When she asked this girl as to who was walking along the road, Va Sale replied it was the accused and a man. Soon afterwards, the accused came to the tap just outside the lean-to structure where Mesi Ieremia had been playing cards with her husband and mother-in-law and washed his hands and dusted his shirt. Mesi Ieremia says she then asked what had happened and the accused replied his shoes had been muddied. She also asked the accused about the old man who was with him and the accused replied it was his friend but he had gone. According to Mesi Ieremia she then saw the accused counting American dollar notes in the light coming from the bulb of her house which was on. She says that her house is an open house without walls; and she could see the accused counting American dollar notes in the light from the bulb. She was able to tell they were American dollar notes because of the light and the colour of the money.

After the accused left, Mesi Ieremia and her mother-in-law went to the spring pool about 30 metres from their house to fetch some water. When they came to the spring pool Mesi Ieremia struck a match stick. She saw the figure of a man lying next to the pool. So she went back to her house to inform her husband. When she returned to the pool with her husband they lighted some papers and she was able to see that it was the same old white man she had seen before earlier that night. His face was covered in blood; his glasses and false teeth were damaged; and he was lying on his side.

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Mesi Ieremia and her husband then took the victim to their house where his injuries were washed and he was given some medicine. During the night and the following morning, the victim could not eat or drink anything except water because of the pain to his jaw.

The evidence of Ieremia Vaea, the husband of Mesi Ieremia, generally confirms the evidence of his wife. He says that on the night in question he was playing cards with his wife and mother after watching video when a taxi came onto their land. He asked his wife to go and see the taxi and when his wife returned, he asked her who it was. She replied it was the accused and an old man. Not long afterwards, he saw the accused washing his hands and feet at the tap just outside of his house. At that time Ieremia Vasa heard his wife asking the accused about the old man who was with him and the accused replied it was his friend and he had gone. His wife also asked the accused what had happened, and the accused replied he had slipped. Ieremia Vasa says his wife then whispered to him that the accused was counting American money. When the accused left, he waved to him goodbye. Then his wife and mother left to fetch some water from the spring pool. They came back and informed him that there was a man at the spring pool.

When they went back to the spring pool and lighted some papers, he noticed that it was a foreigner lying at the pool and he was injured. His lower lip and head were cut. The man was also

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very drunk. They took the victim to their house where he was given some medicine and a rest. Ieremia Vasa noticed from the man's passport that he is an American. He found \$14 tala or \$15 tala on the victim which was returned to him in the morning. He also says he has been acquainted with the accused for many years as he is related to the accused and the accused comes to his house and talk on many occasions.

The next witness, Va Sale, says that she was on her way home with her father on the night of this incident when they met the accused and a man on the road. This man was a white man. The accused and this man had an arm around one another. Va Sale says that the accused said goodbye to her father. She also says that she has known the accused for many years and he was wearing a shirt and long trousers when they met on this night. The accused was also a little taller than the white man who was with him. After Va Sale met with the accused she met with Mesi Ieremia who did ask her. She also says that the accused came to her place of work after the night of this incident and she told him that she had already told Mesi Ieremia that she, Va Sale, met with the accused and another man on the night of this incident.

The last witness for the prosecution was Marine Time, the mother of Ieremia Vasa. Her account is that she observed a person going down to the spring pool three times and then coming up to the

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road again three times. When that person came onto her family's land and proceeded to her family's tap, she observed that it was the accused. Afterwards when she went with her daughter-in-law to fetch some water from the spring pool she noticed a man lying at the pool. Her son Ieremia Vasa was informed and he came and lighted some papers which illuminated the figure of an injured old white man.

Now the evidence called by the defence is essentially that the accused was at the National Hospital on Saturday night, the 8th of January this year, attending to his sick son. So the accused could not have been at the Mt Vaea Nite Club or Vini-fou on the same night. According to the accused, after the party by the Apia rugby club which he attended in the late afternoon of the 8th of January, he went to the National Hospital to see his son who was sick at the hospital. He never left the National Hospital that night. He also says he is not acquainted with the witness Aukuso Tofa. His wife who also gave evidence for the defence says that the accused was at the hospital the whole night of this incident and did not go anywhere. Likewise, the accused's father says that he visited his grandson at the National Hospital on the night of the 8th of January this year after 11.00pm and the accused was at the National Hospital at that time. When he left at close to midnight the accused was still at the National Hospital.

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That is essentially the evidence in this case and the Court will now have to make findings of fact. In the first place I do not believe the evidence for the defence that the accused was at the National Hospital on the whole of Saturday night, the 8th of January. The evidence that the accused was at the Mt Vaea Nite Club and Vini-fou on the night of this incident is overwhelming and much more convincing. I find as a fact that the accused was at the Mt Vaea Nite Club on the night of this incident as testified by the witness Aukuso Tofa who has been acquainted with the accused for quite some time. I do not accept the evidence by the accused that he is not acquainted with Aukuso Tofa. I also find as a fact that the accused accompanied the victim in a taxi from the Mt Vaea Nite Club to Vini-fou. The evidence by the witness Lui Tenari is that there was a person slightly taller than the victim and wearing black trousers who accompanied the victim out of the Mt Vaea Nite Club. The victim says as the taxi he was in was driving off from the Mt Vaea, three people got into the taxi grabbed him around the neck and told the driver to take them to Vini-fou. It was at Vini-fou that Mesi Ieremia observed the accused trying to pull the victim out of the taxi. She later observed the accused washing his hands and dusting his shirt at the tap just outside her family's house and she talked to the accused. She also observed the accused counting some American dollar notes. I was impressed by this witness's evidence and I accept her evidence. I also accept the evidence of Ieremia Vasa, Va Sale and Marine Time as to their

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observations of the accused and the victim at Vini-fou. I bear in mind the special need for caution before convicting in reliance on the correctness of identification testimony. However, it must be pointed out that the accused is no stranger to those witnesses who identified him at Vini-fou as they are all well acquainted with the accused. The witnesses Mesi Ieremia, Ieremia Vasa and Marine Time are also related to the accused. I accept that they correctly identified the accused. I do not accept the alibi that the accused sought to establish. I also accept the description given by these prosecution witnesses of how they found the victim at the spring pool at Vini-fou and the condition he was in at the time. I also accept the evidence of the victim that apart from the assault on him inside the taxi outside of the Mt Vaea Nite Club, he was again assaulted at Vini-fou and deprived of US\$50 to US\$60. There is some doubt whether there were three or just one person who accompanied the victim inside the taxi and assaulted the victim. However, in my view that is immaterial for the purpose of this case as the evidence points to the accused as one of the assailants if not the only assailant in this incident.

I am satisfied that on all the accepted evidence, the most logical and reasonable inference to be drawn is that it was the accused who assaulted the victim at the Mt Vaea Nite Club and Vini-fou and left the victim injured at the spring pool at Vini-fou.

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I also draw the inference from the evidence of the victim and Mesi Ieremia that the accused did steal American dollar notes from the victim. The exact amount stolen, in my view, is immaterial as long as there was some theft accompanied by the use or threat of violence.

I find the charge of robbery proved beyond reasonable doubt.

TFM Sapala
CHIEF JUSTICE