

**IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CRIMINAL DIVISION)**

**CR NOS: 1493, 1495/2023, 628/2024**

**R**

**v**

**ELLIOT HUNT**

Hearing: 12 August 2025

Appearances: T White and T Scott for the Crown  
T Tangimama Pera-Robati for the Defendant

Judgment: 15 August 2025

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**JUDGMENT OF GORDON J**

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[1] The defendant, Elliot Hunt, faces three charges, which all arise out of an incident that occurred on Saturday 23 September 2023 at the Nikao Social Centre beach.

[2] It is alleged that Ms Hunt punched the complainant, Iatisone Sosene, in his mouth. That alleged conduct gives rise to the first of two charges of common assault.<sup>1</sup>

[3] It is further alleged that, while Mr Sosene was attempting to defend himself from Ms Hunt's attack, they both fell onto the ground. While on the ground, it is alleged that Ms Hunt had her hands around Mr Sosene's neck, strangling him, but Mr Sosene was able to free himself. This alleged conduct gives rise to a second charge of common assault.<sup>2</sup>

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<sup>1</sup> Crimes Act 1969, s 216. Maximum penalty of one year imprisonment.

<sup>2</sup> Section 216. Maximum penalty of one year imprisonment.

[4] It is also alleged that Ms Hunt repeatedly shouted at Mr Sosene, “I’m going to kill you”. This alleged conduct gives rise to a charge of threatening to kill.<sup>3</sup>

### **Procedural matter — Judge-alone trial**

[5] Ms Hunt initially elected trial by jury. However, on 30 July 2025, Ms Tangimama Pera-Robati, counsel for Ms Hunt, confirmed to the registry that Ms Hunt wished to change her election from a jury trial to a Judge-alone trial.

[6] At the commencement of the hearing, I formally gave Ms Hunt leave to withdraw her election to be tried by a jury.<sup>4</sup> Accordingly, Ms Hunt’s trial on the three charges proceeded before me as a Judge-alone trial.

[7] Having listened to the evidence and having weighed it up carefully, and having taken account of the submissions from Crown counsel, Mr White, and Ms Tangimama Pera-Robati, on both the facts and the law,<sup>5</sup> I now proceed to give my verdict.

[8] If I do not mention some of the evidence in this judgment, that does not mean I have not considered it.

### **Requirement to give reasons**

[9] A Judge hearing a criminal trial without a jury is required to give reasons for their verdict. The New Zealand Court of Appeal in *R v Connell* held that this requires:<sup>6</sup>

... a statement of the ingredients of each charge and any other particularly relevant rules of law or practice; a concise account of the facts; and a plain statement of the Judge’s essential reasons for finding as he does. There should be enough to show that he has considered the main issues raised at the trial and to make clear in simple terms why he finds that the prosecution has proved or failed to prove the necessary ingredients beyond reasonable doubt. When the credibility of witnesses is involved and key evidence is definitely accepted or definitely rejected, it will almost always be advisable to say so explicitly.

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<sup>3</sup> Section 329(a). Maximum penalty of seven years’ imprisonment.

<sup>4</sup> Judicature Act 1980–81, s 16(4).

<sup>5</sup> I gave counsel leave to address the Court on the facts and the law at the conclusion of the evidence: see Criminal Procedure Act 1980–81, s 74(3).

<sup>6</sup> *R v Connell* [1985] 2 NZLR 233 (CA) at 237–238.

[10] Subsequently, in *Wenzel v R*,<sup>7</sup> the New Zealand Court of Appeal endorsed the approach in the above case, as did the Supreme Court in *Sena v Police*.<sup>8</sup>

### **Directions**

[11] I remind myself of directions, that would otherwise be given to a jury, that are relevant to this trial.

#### *Onus and standard of proof*

[12] As this was a criminal trial, it follows that the onus is on the Crown to prove each element of each charge beyond reasonable doubt before I may find the defendant guilty of any particular charge.<sup>9</sup>

[13] The starting point is the presumption of innocence. The Crown is required to prove that the defendant is guilty beyond reasonable doubt. Proof beyond reasonable doubt is a very high standard of proof, which the Crown could only meet if I am sure that the defendant is guilty of the charges she faces. It is not enough for the Crown to persuade me that the defendant is probably guilty, or even that she is very likely guilty of the charges she faces. Having said this, it is virtually impossible to prove everything to an absolute certainty when dealing with the reconstruction of past events, and the Crown does not have to do that.

[14] Rather, the Crown has to prove the charges beyond reasonable doubt. A reasonable doubt is an honest and reasonable uncertainty left in my mind about the guilt of the defendant on any of the three charges, after I have given careful and impartial consideration to all of the relevant evidence that is admissible on the particular charge. In other words, I may only find the defendant guilty if I am sure that all the elements of any particular charge she faces have been proved by the Crown.<sup>10</sup>

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<sup>7</sup> *Wenzel v R* [2010] NZCA 501 at [39]–[40].

<sup>8</sup> *Sena v Police* [2019] NZSC 55, [2019] 1 NZLR 575 at [17], [18] and [36].

<sup>9</sup> *Woolmington v Director of Public Prosecutions* [1935] AC 462 (HL) at 481–482.

<sup>10</sup> *R v Wanhalla* [2007] 2 NZLR 573 (CA) at [49].

### *Defendant Police Interview*

[15] Ms Hunt was interviewed by a police officer on 28 September 2023. She was not required to make a statement but did so. In making a statement, Ms Hunt has not taken on an onus to prove her innocence. It remains for the Crown to prove her guilty of the three charges. I bear in mind that while Ms Hunt has given an explanation (which I will refer to later in this judgment), her statement to the police officer was not made on oath.

### *Defendant not giving or calling evidence*

[16] Ms Hunt did not give or call evidence at trial. That is her right. There is no obligation on a defendant to give or call evidence. Ms Hunt does not bear an onus to prove her innocence. The fact that she did not give or call evidence does not add to the case against her.

### *Inferential reasoning*

[17] This is a trial in which the Court will need to draw an inference in relation to the defendant's intent when making the threat (if I find she did make a threat as alleged). I am permitted to employ reasoning by inference. I remind myself that an inference is a conclusion drawn from proven facts.<sup>11</sup> When drawing an inference, I must consider all of the evidence relevant to the inference. If the evidence supports two inferences of equal weight, then to choose between the two of them would be to guess or speculate and the court may not do that. Whether I draw any inference is for me to determine as the judge of the facts.

### *Credibility and reliability*

[18] I will need to make an assessment of the credibility and reliability of the various witnesses. Credibility means honesty and sincerity. It will be important for me to consider whether a witness is being honest in their evidence. Reliability is something different. A person may be entirely honest, but maybe mistaken on one or more points.

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<sup>11</sup> *R v Thomas* [1972] NZLR 34 (CA).

[19] In assessing witnesses for both credibility and reliability, I will bear in mind:

- (a) Whether the witness's evidence is consistent with the evidence of other witnesses whose evidence I accept (but noting there is no legal need for corroboration of a witness's evidence).
- (b) Whether the witness's evidence is consistent with any objective evidence.
- (c) Whether the witness's account is inherently plausible. In other words, does it make sense?
- (d) Whether the witness has been consistent in their account over time and, if not, why not?

[20] It is open to the court to consider that part of a witness's evidence is credible and reliable, but to have a doubt about other parts of their evidence.

*Read evidence*

[21] Some of the evidence was read to the court without the witnesses giving evidence in person. Obviously, this evidence is not any the less important simply because it has been read to the court. It is to be treated in exactly the same way as any other uncontested evidence in the trial.

**Elements of the charges**

[22] Charges 1 and 2 are both charges of common assault. For each of these two charges the Crown must prove beyond reasonable doubt that Ms Hunt intentionally applied force to Mr Sosene.

[23] In the circumstances of this case, in order to find Charge 1 proven, I must be sure that on 23 September 2023, Ms Hunt intentionally punched Mr Sosene in the face.

[24] In order to find Charge 2 proven, I must be sure that on 23 September 2023, Ms Hunt intentionally choked Mr Sosene.

[25] Charge 3 is a charge of threatening to kill. In order to find this charge proven, I need to be sure of each of the following elements of the offence:

- (a) on 23 September 2023, Ms Hunt said to Mr Sosene, “I’m going to kill you”; and
- (b) by saying “I’m going to kill you”, Ms Hunt threatened to kill Mr Sosene; and
- (c) Ms Hunt intended Mr Sosene to take the threat seriously.

[26] Whether the words constitute a threat “is a question of law to be decided on an objective standard” so that the actus reus “will be made out if a reasonable person fully aware of the circumstances in which the words were uttered or conveyed would have perceived them to be a threat of death”.<sup>12</sup>

[27] In any circumstance where threats are spoken with the intent that they be taken seriously the elements of the offence will be made out.<sup>13</sup>

[28] It is not an essential element of the offence that the person subjected to the threat actually fear for his or her safety as a result of the threat. The reaction of the person threatened is only of evidential significance.<sup>14</sup>

[29] The mens rea required is an intention that the threat be taken seriously (or be taken as a threat which may be carried out).<sup>15</sup>

[30] Whether the threatener intends to carry out the threat is irrelevant. The aim of the statutory provision is to protect against fear and intimidation rather than against the commission of any act threatened.<sup>16</sup>

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<sup>12</sup> *R v McRae* [2013] SCC 68 at [10] and [16].

<sup>13</sup> *Reihana v Police* HC Auckland CRI 2009-404-205, 21 September 2009 at [4] citing *R v Meek* [1981] 1 NZLR 499 (CA).

<sup>14</sup> At [6].

<sup>15</sup> At [4].

<sup>16</sup> *R v McCraw* [1991] 3 SCR 72 (SCC) at 82.

## **The evidence**

[31] The Crown case depends, in large part, on the evidence of Mr Sosene. However, there are four independent witnesses who saw, what I consider was just part of the interaction between Mr Sosene and Ms Hunt. One of them in particular gave evidence which I consider corroborates the evidence of Mr Sosene.

[32] A summary of Mr Sosene's evidence taken from his evidence-in-chief, cross-examination and questions from the Court is as follows.

[33] Mr Sosene said that on Saturday, 23 September 2023, he drove to Nikao beach with his three-year-old granddaughter in the car with him. He said he went there to collect some sea water.

[34] He parked his car next to a white double-cab truck. When he got out of his car he said he saw two ladies in the truck. He described them as "sort of kissing and drinking, cuddling." Mr Sosene and his granddaughter then walked down to the beach to fill up the bottles he had brought with him, with sea water.

[35] When he came back up from the beach Mr Sosene put the bottles of sea water in his car. He said he had not realised his granddaughter had not come back to the car with him. So to get his granddaughter:

I yelled out, I yelled out a few times and beeped the horn. I sort of pretended that I'm leaving, you know, just to get my granddaughter's attention. I hopped in the car, turned the car on, just pretending that I'm going to go, go home. I've been yelling and beeped the horn so many times.

[36] He said his granddaughter came back and he put her in his car. He said he was then going to get in the car himself and one of the ladies from the truck, the one with ginger hair:

... she walked at me, she got out, and started swearing, and you know, all rude words, really bad.

[37] I interpolate at this point to say there is no issue as to the identity of the defendant. She was the person whom Mr Sosene described as having "ginger hair". The reasons why I say there is no issue as to identity are, first, one of the independent

witnesses, Nicholas Dun (whose evidence I will come to shortly), knew Ms Hunt and recognised her. He also knew Mr Sosene. Second, in her statement made to the Police on 28 September 2023, Ms Hunt acknowledged her presence at Nikao beach, and her interaction with Mr Sosene. Ms Hunt casts a different light on the interaction and I will come to that later in this judgment. But for present purposes I record that the person who interacted with Mr Sosene was the defendant, Ms Hunt.

[38] I return to Mr Sosene's evidence. He said that Ms Hunt and the woman with her started yelling at him while they were still in the truck.<sup>17</sup> He told them to mind their own business. He acknowledged that while the two women were in the truck yelling at him and swearing at him, he had a handful of sand and, just to make them stop swearing, he threw the handful of sand at the truck. He said he just wanted them to stop swearing.

[39] Under cross-examination he accepted that he also threw a mix of small stones towards the truck; again, while Ms Hunt and her partner were still inside the truck. Mr Sosene's evidence was that Ms Hunt got out of the truck after he threw the sand and stones.

[40] In response to questions from the Court, Mr Sosene described Ms Hunt's demeanour as she approached him as, "angry". What led him to say that she was angry was the way she talked to him, and the way she walked towards him. He said it looked as though she was going to walk straight at him and was going to do something. He said she kept coming towards him and that was when he pushed her away. He described the push as holding his arm out in front of him, with his palm outwards facing towards Ms Hunt. He also accepted under cross-examination that he grabbed Ms Hunt's bikini top to stop her from coming closer to him.

[41] Mr Sosene said that Ms Hunt said to him, "I remember your car, I've got your register number plate." She also said to him, "I remember your number plate" and "I'm going to kill you."

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<sup>17</sup> In later evidence, the woman with Ms Hunt is referred to as Ms Hunt's partner. I will use that term as appropriate.

[42] He said that she still kept coming towards him. He knew she would do something and that was when she punched him on the side of his mouth with her closed fist.

[43] Mr Sosene said on a scale of one to ten, with ten being the hardest, the punch was “strong, 10”. He said it was a full-force punch.

[44] Mr Sosene said the two of them then struggled and “we rolled down to the beach backwards”. He said Ms Hunt was choking him and strangling his neck. He said she “grabbed [his] neck from behind” and it was then they fell on the ground and rolled down because she was still choking him. He demonstrated the choking, with the defendant standing behind him with her arm around his neck. He said it was sore. Mr Sosene said that after the struggle, and when he and Ms Hunt were rolling on the sand towards the beach, he heard somebody saying, “Let him go, let him go”.

[45] Mr Sosene said he managed to get away from her. He was “so scared”, and he got into his car where his granddaughter had remained. He then drove home.

[46] In cross-examination Ms Tangimama Pera-Robati put to Mr Sosene that he did not like seeing Ms Hunt and her partner hugging and kissing in the car. His response was, “I didn’t bother to, I just left, going down to the beach”. I take that response to mean that it was not an issue for Mr Sosene.

[47] Defence counsel also put to Mr Sosene that he had not mentioned in his statement that Ms Hunt and her partner were holding a bottle of spirits, or that they were drinking. It was put to him that he was lying about that issue. He responded that he was not lying. He acknowledged he grabbed Ms Hunt’s bikini top to stop her from coming closer, that he had pushed her away and that there was a struggle and they fell to the ground. But importantly, Ms Tangimama Pera-Robati did not challenge Mr Sosene at all on the essential evidence given by Mr Sosene regarding the punch, choking, and threatening to kill.

[48] The witness, Nicholas Dun, whom I mentioned earlier, gave evidence that on the afternoon of Saturday 23 September 2023, he went to the Social Centre beach located in Nikao on the western side of the Airport, with three of his children.

[49] He said they arrived early afternoon around 2 pm. He had taken a folding chair with him which he put at the edge of the water, so he was near his children who were in the sand and swimming.

[50] At one stage he went back up to where his car was parked and he noticed a white double-cab truck. He said he was not parked directly next to that truck but close enough to recognise the occupants. One of them, whom he recognised, was "Elliot Hunt". She was a teacher at a pre-school where some of his children had attended.

[51] He said Ms Hunt looked like maybe she had had some drinks, having regard to her mannerisms. He thought that was maybe the reason he did not call out and say hello. In relation to her mannerisms he said her movements were not the normal way she walked. He said she wasn't drunk, "just kind of tipsy". He then went back down to the beach.

[52] After that, and while he was sitting on his chair at the water's edge, Mr Dun said he recognised Mr Sosene whom he also knew. They said hello to each other. Mr Sosene came down with some buckets or containers to collect sea water, and Mr Dun thought Mr Sosene had a young girl with him aged, he thought, around five years old. He said Mr Sosene appeared to be behaving as he knew him to behave, namely, "pretty kind of easy going". After filling up the containers with sea water Mr Sosene left, but Mr Dun did not see where he went to.

[53] Mr Dun said it was about that time he was packing up. It was around about 6 pm. He had had a small speaker with him playing music, and when he started packing up and turned the music off he said he could hear a "disturbance" which he described as "raised voices". He could not hear what was being said as it was too far away, but he described the voices as being "agitated" and "heated". He was still by the waterside when he heard those voices from higher up the beach behind him. He

said he did not know how long it had been going, but he thought he noticed it as soon as he switched his music off.

[54] He said he then approached the area to see what the problem was, but he only really saw the end of whatever the argument had been. He said he saw Mr Sosene and Ms Hunt both standing facing each other. Ms Hunt's friend was sitting down.

[55] Mr Dun described Mr Sosene as "kind of backing back towards Black Road direction." He said Mr Sosene was facing the Airport direction and was backing up with his hands raised in a defensive kind of position. He did not see anyone strike anyone, but Mr Sosene was definitely moving away, and then he disappeared up to his vehicle. Mr Dun demonstrated Mr Sosene having his hands up with open palms facing outwards in front of him.

[56] Mr Dun described Ms Hunt as not happy and quite distressed. He described Ms Hunt's friend as coming up behind Ms Hunt, he thought, in a consoling kind of way. At that point he did not see Ms Hunt being aggressive towards Mr Sosene.

[57] Mr Dun noted that Ms Hunt's bikini top was not on, as it had been earlier. He moved away to leave Ms Hunt to be with her friend.

[58] Under cross-examination Mr Dun acknowledged he did not hear Ms Hunt shout "I'm going to kill you" at Mr Sosene; nor did he see Ms Hunt punch Mr Sosene or strike him.

[59] I do not consider those acknowledgements by Mr Dun in any way weaken or detract from Mr Sosene's evidence. It appears to me that Mr Dun arrived on the scene after the events described by Mr Sosene had already occurred, and Mr Sosene was moving back to his car. I also consider Mr Dun would not have heard the words "I'm going to kill you" partly because of the music he was playing and also because of the distance between where he was at the water's edge, and where the events were occurring back up behind the beach under the trees near where the cars were parked.

[60] The next three witnesses were travelling together in a car with a fourth person (who was not called as a witness).

[61] Marise Noovao said that on the afternoon of Saturday 23 September 2023 she and her two cousins (Mr Siaosi Kaufononga and Dr Tapaeru Kaufononga) and Mr Kaufononga's girlfriend, Tanga Morris, went for a drive. She said Mr Kaufononga was driving, Ms Morris was in the front passenger seat, she (that is Ms Noovao) was sitting on the back-left behind the front passenger, and her cousin, Tapaeru, was seated beside her.

[62] Ms Noovao said that at around 5.50 pm or 6 pm, they had just reached the Social Centre when she and others in the car, as they looked towards the beach, noticed there was an altercation going on. She said they told Mr Kaufononga that he had to go back. He turned the car around and they parked between two vehicles. She said one was Mr Sosene's vehicle, and the other was a white truck. Ms Noovao said she was familiar with Mr Sosene's vehicle as she had seen his daughter driving it at times.

[63] Ms Noovao said when they pulled up she saw Mr Sosene's granddaughter inside his car, Mr Sosene and two women. She described one as having black hair, and she was quite small. She was wearing a white bikini. She said the other woman was taller, was blonde, and was wearing a red bikini. She said all three were having the altercation.

[64] Ms Noovao said that as she was running from her car she noted that the passenger side of the white truck was open and there was alcohol in the car. She said she saw two bottles.

[65] The notes of evidence record the following:

Q And how long approximately do you think it took from when you first saw them, driving past; to turning around and arriving at the scene?

A 15 to 20 seconds. We turned pretty quickly.

Q And when you arrived there what did you do?

A I immediately got out of the car and ran towards all three of them.

Q And what were the three of them doing?

A The girl with the black hair she was trying to – from my view – trying to separate the two. Papa Sosene, was on the ground and the blonde girl was in the middle.

Q So who was the main altercation between?

A It was Papa Sosene, and the blonde girl.

Q The blonde girl with what colour bikini?

A Red.

Q Did you notice anything about the granddaughter at the time?

A She was screaming and crying from the car. But she stayed in the car, she never came out.

Q So what did you do after you jumped out of the car?

A I went straight to where the altercation was, by then they had moved towards the bushes, just before you go down the sand, and they were – the black girl tried to separate them, and I just tried to step in as well. But when they saw me, I think they were already trying to separate themselves.

Q So the black haired girl, is that right?

A Yeah.

Q And she was trying to separate them?

A Yes.

Q Did you notice anything about the blonde girl, and what she was doing?

A She had her hands around Papa Sosene's neck. Papa Sosene had his arms also – his hands gripped on her arms, and she was also trying to hit him.

Q She was trying to hit him? Did you see her hit him?

A No.

Q So the blonde girl had her hands –

A At his neck.

[66] Ms Noovao said from her perspective it appeared the black haired girl was trying to pull the blonde woman off. She said Mr Sosene was trying to push her back. She described the blonde girl's manner as "quite frantic, it was just, I think she was just angry." She said the blonde girl was shouting and screaming at Mr Sosene:

Okay, she said things like, "I'll kill you, you're disgusting, you're a [fucking] bastard, she doesn't deserve you, and she kept repeating those sentences.

[67] Ms Noovao assumed that when the blonde girl was saying, "she doesn't deserve you", that was a reference to Mr Sosene's granddaughter inside his vehicle.

[68] She said Mr Sosene dusted his clothes off, grabbed his cap that was on the ground and went to his granddaughter. He seemed shaken up by the situation.

[69] She said that after Mr Sosene left, the blonde woman was still shouting those things at Mr Sosene, and then she started looking for her bikini top. She described her as breathing very hard and visibly upset.

[70] I accept that Ms Noovao's references to the blonde woman are references to Ms Hunt.

[71] Ms Tangimama Pera-Robati did not cross-examine Ms Noovao at all. That leaves intact, Ms Noovao's evidence of Ms Hunt having her hands around Mr Sosene's neck and Ms Hunt threatening to kill him.

[72] Although Ms Noovao did not see the punch to Mr Sosene's face as he described, I accept Mr Sosene's evidence that it happened. I also accept it occurred at the beginning of events and before the car in which Ms Noovao was travelling pulled up at the scene.

[73] I was impressed by Ms Noovao as a witness. She gave her evidence in a clear and calm manner. Although she knew Mr Sosene, or at least members of his family, and did not know either the defendant or her partner, I did not get the sense that Ms Noovao was partisan in her evidence. She gave her evidence as an independent

witness. I accept her description of the part of the events that she saw. Her evidence also enables me to accept Mr Sosene's evidence (not that there was any challenge to the essential aspects of his evidence).

[74] Mr Kaufononga's evidence as to those in the car, was as described by his cousin, Ms Noovao. He said that as they reached the Nikao area, getting close to the Airport area, they saw an altercation between an old man and a lady, and that is when the decision was made to turn around.

[75] He said from what he could see there was a lot of pushing and a lot of shoving; but he said, as the driver, he had to keep his eyes on the road at the same time as trying to see what was going on. He saw another lady, so there were three people all together. He said it looked like the other lady was trying to separate the two.

[76] Mr Kaufononga said that after turning around they parked in front of the bushes towards the beach side. He said at that time the old man and the lady, who had been doing the pushing and shoving, were on the ground. He said that when he hopped out of their vehicle, the altercation was kind of done and the two were separated.

[77] Mr Kaufononga said he remembered the lady who had been on the ground was missing her bikini top. So he went looking for it. He found it, gave it to his cousin, Ms Noovao, to hand it over to her.

[78] In terms of the lady who had been on the ground, he described her demeanour as "loud, screaming". He said she was screaming words and a few profanities. He said the one thing he could remember clearly was that she was saying, "Yuck, you're yuck. You don't deserve her." He said she was screaming more than that but he could not remember the other words she said. The lady was screaming those things to the old man. As she was screaming at him the old man was walking away towards his vehicle. He said the old man looked calm, he was quiet and he was in shock, in a way. As the old man walked away, he said the lady who had been involved in the altercation was continuing to shout.

[79] I accept that the lady who was doing the pushing and shoving, and who was on the ground and who was shouting was Ms Hunt.

[80] Under cross-examination Mr Kaufononga accepted that he did not hear Ms Hunt shout at Mr Sosene "I'm going to kill you"; nor did he see Ms Hunt punch or choke Mr Sosene.

[81] However, I accept Mr Kaufononga's assessment that by the time he got out of the car the altercation was almost over. I accept that Ms Noovao was the first person out of their vehicle. She was also seated on the side of the car nearest the sea when they pulled up, whereas Mr Kaufononga was on the driver's side. I do not consider Mr Kaufononga's acknowledgments that he did not see punching or choking, nor hear the threat to kill, detracts from Ms Noovao's evidence, which I have accepted. But his evidence does accord with Ms Noovao's evidence in that he describes Ms Hunt as the one behaving in an aggressive manner.

[82] Dr Kaufononga, was the third person in the car that arrived at the scene. Dr Kaufononga gave evidence that accorded with the evidence of her brother, Mr Kaufononga, and her cousin, Ms Noovao, namely that on the afternoon of Saturday 23 September, they were going on a drive and near the Nikao Social Centre she could see a scuffle happening. She described it as a scuffle between an old man and two ladies. She said at first she thought they were just playing around, but then as she kept watching it looked like the old man was attacking one of the ladies. So, she said, "We got my brother to turn us around to go and check out what's happening".

[83] She said that when they got to the scene Ms Noovao got out of the car immediately, then her brother followed shortly after; but his girlfriend, in the front seat, and herself, in the back, stayed in the car.

[84] She said from where she was in the car she could not see too much. She said that when they arrived the old man was already walking up from the beach towards his car, and behind him was the girl that he had been having that scuffle with. Dr Kaufononga said, "The woman was on the ground and shouting stuff at the man." She could not recall what the woman had said. She said her friend was nearby.

Dr Kaufononga thought the friend was looking for the bikini top, because the woman on the ground was topless at that time.

[85] Dr Kaufononga described the woman on the ground as “blonde, and looked really distressed”. I accept that was Ms Hunt.

[86] Dr Kaufononga said that the blonde woman was shouting at the old man, who was walking away. She described her tone as “very angry at the old man, and very loud.”

[87] Under cross-examination Dr Kaufononga accepted that she did not see Ms Hunt punch or choke Mr Sosene, nor did she hear her say “I’m going to kill you” to Mr Sosene.

[88] Although the three witnesses I have just referred to were all in the same car, I consider they saw different parts of the incident. As I said when discussing Mr Kaufononga’s evidence, Ms Noovao saw more than the other two as, not only was she on the seaward side of the car when it pulled up, but she also got out of the car immediately. Dr Kaufononga did not get out of the car and, in my view, only saw the end of the incident. The fact that she did not see what Ms Noovao saw does not detract from Ms Noovao’s evidence.

[89] As to Dr Kaufononga’s evidence that as they were driving past, it looked like the old man was attacking one of the ladies, that was seen by her from a moving car, at a distance. I do not consider it is reliable evidence that would establish that Mr Sosene was assaulting Ms Hunt. It is consistent with his evidence that he was trying to push her away. I consider that all three witnesses who were in the car gave their evidence honestly and independently from each other, but that each saw a different part of the incident.

[90] I next refer to the evidence of two witnesses whose depositions were read to the Court.

[91] Pokotea Guinea, a registered nurse, said that at about 1845 hours on Saturday, 23 September, Ms Hunt and another girl came into the hospital to be treated for an assault that happened at the Social Centre. Nurse Guinea said she brought Ms Hunt into the Emergency Department and noted that Ms Hunt was “drowsy and talking irrational”. She said she smelt of alcohol as well. She said Ms Hunt was the more intoxicated of the two.

[92] Nurse Guinea said that Ms Hunt had injuries, grazes down her right side, but they were not serious. A doctor present wanted to assess her, as Ms Hunt was complaining of pain in her groin area, but upon palpitation Ms Hunt told the doctor to stop and not touch her because it was too painful.

[93] Nurse Guinea said that the two women were not being aggressive to each other, but were “kind of arguing and swearing at each other”, as the other girl wanted Ms Hunt to be checked out by the doctor and Ms Hunt was refusing to be examined.

[94] A Police officer, Walepapa Maro, said that at about 1820 hours on 23 September 2023, an assault complaint was reported to the Police. He said that he and another officer arrived at the hospital at about 8.04 pm. Officer Maro asked Nurse Guinea if it was all right to talk to Ms Hunt. Nurse Guinea replied that she was not sure because Ms Hunt, “was in a lot of pain and was intoxicated at the moment.”

[95] Officer Maro said he tried to speak to Ms Hunt, but said she was really in pain, “closing her eyes just lying on the bed, and couldn’t talk much at all.” He asked her if she could talk and she said, “Yes, she could.” He asked her about details but she did not say much about it, and she really could not remember what had happened. He said Ms Hunt’s partner came into the room while he was talking to Ms Hunt. The partner tried to explain to him what had happened, but Ms Hunt told her to “shut the fuck up”, and the partner did not say anything else.

[96] The Crown produced photos of Mr Sosene. The photographs are undated but were obtained by the Police from a third person on 26 September 2023. Mr Sosene appears to have bruising around the outer corner of his left eye. It is not possible to discern whether there was any bruising in the area where he said he was punched,

because of Mr Sosene's moustache and full beard. It is also not possible to discern whether there is any bruising or other injury to his neck area.

[97] The photographs of Ms Hunt show what appear to be scratches and some bruising on a lower limb or limbs.

[98] I now turn to Ms Hunt's explanation of the events that she gave to a Police officer when interviewed on 28 September 2023. After the standard preliminaries the interview continues as follows:

Q Tell me what happened that day?

A Shaynee Warren and I were at Charlies and we had 1 margarita each and a shot. We had a dispute, a personal one then we left and went to the Social Centre to talk about it. We were just sitting in the truck talking about it, and then this guy sped up to us in his car, I have no idea why, then he jumped out with force and was so angry yelling at us. I asked him to calm down and please stop, he had a child in the car which is beside the point ... anyway ... he picked up a handful of sand and maybe rocks and threatened to throw it on my truck. I think Shaynee aggravated him somehow. He threw the first handful then I asked him to please calm down, after he threw the 3<sup>rd</sup> one he walked away, and I said, "where are you going, who's going to pay for the damage to my truck. Then he speared tackled me to the ground and I can't remember anything after that. When I was 14 I fell out of a car, and hit my head so I'm really careful with what I do because of that.

[99] Apart from the reference to the throwing of a handful of sand and throwing one handful only of small rocks, none of the key aspects of that explanation were put to Mr Sosene when he was cross-examined:

- (a) It was not put to him that, "He sped up to us in his car". Rather, Mr Sosene's evidence was that he parked near the white truck and then got out of his car with his granddaughter and went down to the beach.
- (b) It was not put to Mr Sosene that he jumped out with force and was so angry yelling at Ms Hunt and her partner. Rather, Mr Sosene's evidence was that after he had been down at the beach and had come back to his car, on realising that his granddaughter was not with him,

he was yelling at his granddaughter to come back to the car. There was no suggestion in his evidence that he was yelling at Ms Hunt and her partner.

- (c) It was not put to Mr Sosene that he “spear tackled” Ms Hunt to the ground.

[100] The Court cannot really put any weight on Ms Hunt’s explanation, given it was not put to Mr Sosene and given Mr Sosene’s evidence in large measure was supported by the evidence of Ms Noovao.

[101] In relation to the amount of alcohol consumed, Ms Hunt amended what she said in the part of the interview quoted above, saying that she had had a strong Margarita and two shots. But she insisted that what she had drunk did not affect her at all.

[102] That is inconsistent with the evidence of Nurse Guinea, whose evidence was introduced without cross-examination.

[103] The interview then contains the following:

Q Were you sitting in the truck when he threw the sand and the rocks?

A. Yes, all 3 times.

Q. After he did that, he walked away?

A. Yes, he walked away then I got out of the truck and said, “hey, where are you going, who’s going to pay for my truck?”

Q. Describe to me what happened when you got out of the truck?

A. Yeah, I said, “Hey what the fuck, who’s going to pay for my truck?” Then he shoved me and then he spear tackled me to the ground.

...

Q. Before he did that [shoved her] you didn’t touch him at all?

A. Nope, didn’t touch him at all.”

[104] I do not accept Ms Hunt’s explanation of events. Having said that, I accept that the Court does not move to an immediate finding of guilt. I still need to be sure that the Crown has proven the three charges.

[105] I also note for completeness that provocation is not available as a defence in the Cook Islands and, through Ms Tangimama Pera-Robati, Ms Hunt specifically disavowed that she was acting in self-defence.

[106] I consider Ms Hunt was the aggressor on that day. It seems she may have formed the view that Mr Sosene's yelling out for his granddaughter was Mr Sosene yelling at her and her partner. Ms Hunt then went on the offensive, yelling at Mr Sosene from inside her truck. I accept that Mr Sosene then threw some sand and some small stones at Ms Hunt's truck. That made her even more angry and she got out of the truck.

[107] I accept the evidence of Mr Sosene. He gave his evidence in a low-key and careful manner. As noted, he was not cross-examined on the essential aspects of his evidence that go to the elements of the charges. His evidence on those essential aspects, at least for the choking and threat to kill, was supported by the evidence of Ms Noovao.

[108] While Mr Sosene acknowledged that he did not refer to Ms Hunt drinking and having alcohol when he made his original statement, I do not consider that undermines the essential parts of his evidence. I also note that Ms Noovao saw two bottles of alcohol in the defendant's truck.

[109] I accept the Crown has proven, and I am sure, that Ms Hunt deliberately punched Mr Sosene in his mouth with a closed fist. It was a forceful punch. That act was driven by her anger, which I consider was fuelled by intoxication. The punch was intentional and deliberate. I am sure of that. Charge 1 is proven beyond reasonable doubt.

[110] I also accept Mr Sosene's evidence and I am sure that Ms Hunt deliberately assaulted Mr Sosene by choking him.

[111] I further accept, and I am sure, that Ms Hunt threatened to kill Mr Sosene. The words she said were, "I'm going to kill you". That was what Mr Sosene heard and that was what Ms Noovao heard. I am sure that Ms Hunt intended those words to be

taken seriously. She told Mr Sosene that she remembered his car and she remembered his number plate.

[112] Mr Sosene said he was scared. While I accept his reaction is only of evidential significance, it supports my finding that Ms Hunt intended her words be taken seriously. Accordingly, I am sure that the actus reus and mens rea for charge 3 are proven beyond reasonable doubt.

## **Result**

### *Charge 1: Common assault*

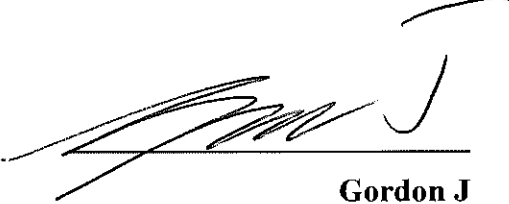
[113] The Crown has proven beyond reasonable doubt that on 23 September 2023, at Nikao, Elliot Hunt assaulted Iatisone Sosene by punching him. I find Ms Hunt guilty on this charge.

### *Charge 2: Common assault*

[114] The Crown has proven beyond reasonable doubt that on 23 September 2023, at Nikao, Elliot Hunt assaulted Iatisone Sosene by choking him. I find Ms Hunt guilty on this charge.

### *Charge 3: Threatening to kill*

[115] The Crown has proven beyond reasonable doubt that on 23 September 2023, at Nikao, Elliott Hunt threatened to kill Iatisone Sosene. I find Ms Hunt guilty on this charge.



**Gordon J**