

CRIMINAL JURISDICTION

REPUBLIC

V

Namo Daniel

Date of Hearing: 3 March 2016

Date of Judgement: 9 March 2016

Mr. Livai Sovau Office of the Director Public Prosecution for the Republic

Mr. Ravunimasei Tangivakatini Office of the Director Legal Aid for the defendant.

JUDGMENT

INTRODCUTION

1. The defendant is charged with 1 count of being found drunk and disorderly contrary to section 4 of the Summary Offences Act 1967. The particulars of the offence for count 1 are that Namu Daniel on the 2nd March 2013 at Aiwo District in Nauru was found drunk and disorderly in a public place at the Centennial Hall. Section 4 of the Summary Offences Act 1967 reads:

*"A person found drunk and disorderly in or any public place shall be guilty of an offence. Penalty six dollars"*¹

2. The defendant is also charged with 1 count of serious assault contrary to section 340(2) of the Criminal Code 1899. The particulars of the offence is that Namu Daniel on the 2nd March 2013 at Aiwo District in Nauru did resist a police officer namely Senior Constable Jordie Edward while acting in the execution of his duty. Section 340(2) of the Criminal Code 1899 reads:

*"Any person who:...Assaults, resists, or wilfully obstructs, a police officer while acting in the execution of his duty, or any person acting in aid of a police officer while so acting;...is guilty of a misdemeanour, and is liable to imprisonment for had labour for three years."*²

3. The defendant pleaded not guilty and this matter proceeded to trial. The prosecution called 1 witness and closed its case.

¹ Section 4 Summary Offences Act 1967

² Section 340(2) of the Criminal Code 1899

AGREED FACTS

4. The following facts are agreed to by the prosecution and the defence, that the offence is alleged to have occurred on the 2nd March 2013 and that it is alleged to have occurred at the Centennial Hall which is a public place. That the defendant was drunk at the time he is alleged to have offended and that the accused was arrested on the 2nd March 2013. The statement of Constable Jayjay Bop and Acting Sergeant Fernando Dabue were tendered by consent.

THE ISSUES IN DISPUTE

5. The issues that are in dispute are that the accused was disorderly at the time offending and that he resisted arrest.

PROSECUTION CASE

6. The evidence of Senior Constable Jayjay Bop and Acting Sergeant Fernando Dabue were by way of statements tendered by consent. These two officers arrived at the scene after the alleged incidents that gave rise to the two charges preferred against the defendant. Their statements are therefore not relevant to the issues to be determined by the court.
7. The only witness called by the prosecution is Sergeant Jodie Mark Edwards. His evidence is that on that day he was on duty and Jarred Jones called and reported that there was a drunkard man, drunkard at the Centennial Hall and they were making a lot of noise. After receiving the call from Jarred Jones he got there and met Jarred and he (Jarred) was talking to the defendant and the defendant was drinking alcohol and he was with his friends. Sergeant Edwards's evidence is that he got out from the vehicle and went to the defendant. He was about to arrest the defendant, he grabbed the defendant by the shirt and there were other persons intervening his arrest. Sergeant Edwards's evidence is that he could not tell the defendant what he was being charged with because of the person intervening.
8. Sergeant Edwards's evidence is that the person intervening was Woaen Solomon. Sergeant Edwards gave evidence that he was trying to arrest the defendant by way of grabbing him by the shirt and that he was about to tell him what he was being charged with but the other (Woaen Solomon) intervened and so he could not arrest him. Sergeant Edwards gave evidence that he Mr. Solomon went in between the two of them and was trying to get his hands of the defendant. At the same time the defendant was slapping his hands trying to free himself and when his hands missed Sergeant Edwards's hands, he Sergeant Edward got slapped in the face. The defendant then ran and fell on the gravel. Sergeant Edward chased after him, caught up with him grabbed him and told him of the charges for resisting arrest and drunk and disorderly. Sergeant Edwards's evidence is that after he informed the defendant of the charges, he escorted the defendant to the police vehicle and

he called for police back up. During cross-examination, Sergeant Edward agreed that he was going to tell the defendant reasons for his arrest, but the other person (Solomon) intervened. Also during cross-examination Sergeant Edward agreed that Mr. Solomon was obstructing him but asserted that the defendant was resisting him. Sergeant Edward during cross-examination agreed that after the defendant fell to the ground, and he caught up with him the defendant complied and he escorted the defendant to the police vehicle. Sergeant Edward further confirmed during cross-examination that although Mr. Solomon was arrested together with the defendant that day, he Mr. Solomon was never charged with any offence.

ASSESSMENT OF THE EVIDENCE:

9. The fact that the defendant was drunk at that time is not disputed. At its highest, the evidence of Sergeant Edward is that when he arrived at the scene he saw Jarred Jones talking to the defendant and that the defendant was drinking alcohol with his friends. The aspect of Sergeant Edward's evidence that he received a phone call from Mr. Jones that the defendant was drunk and disorderly is inadmissible hearsay. Mr. Jones who rang Sergeant Edward has not been called to give evidence. So there is no evidence before this court about the actions of the defendant and his friends which caused him to telephone the police. Sergeant Edward himself gave evidence that when he arrived he saw the defendant and his friends drinking alcohol. The fact that the defendant was drunk at that time is not disputed by the defence. The issue disputed by the defence is the disorderly conduct. No evidence of disorderly conduct on the part of the defendant has been presented to the court by the prosecution.
10. Mr. Sovau submits that the actions described by Sergeant Edward that the defendant was slapping his hands trying to release himself and when his hands missed he (defendant) ended up slapping Sergeant Edward's face should on the evidence be taken as the disorderly conduct making out the element of disorderly in the drunk and disorderly charge. To accept the submission by Mr. Sovau would be an error of law, because it would make the charges bad for duplicity and multiplicity. In effect charging the defendant with more than one charge for the same set of transactions. These two principles would bar a defendant from being charged with more than once offence for the same set of actions. On the evidence, it is clear that the evidence of Sergeant Edwards relate to the charge of resisting arrest not drunk and disorderly.
11. The element of disorderly in respect of the charge of being drunk and disorderly in a public place is not made out. It would have been different had the defendant been charged with being found drunk in a public place under section 3 of the Summary Offences Act 1967. Being found drunk in or on any public place is a separate and distinct offence under section 3 of the Summary Offences Act 1967 where the maximum penalty is a fine of four dollars. Being found to be both drunk and

disorderly in or on any public place is a distinct and separate offence which carries a penalty of six dollars fine under section 4 of the Summary Offences Act 1967.

12. There is no evidence of disorderly conduct being adduced by the prosecution against the defendant at this stage of the proceedings. I must therefore find that the defendant has no case to answer for the charge of being drunk and disorderly in a public place. I discharge and acquit the defendant.

THE CHARGE OF RESISTING ARREST.

13. I have found that the defendant has no case to answer for the charge of being found to be drunk and disorderly in or on any place. On the evidence there is evidence to show upon arrival that Sergeant Edward saw the defendant and his friends drinking alcohol and as such would have lawful grounds to arrest the defendant without a warrant. This is to be found in section 6(1) of the Summary Offences Act 1967 which reads:

"Any constable may arrest without warrant any person whom he be finds committing an offence under this Act"³

14. It is not disputed by the defence that the defendant was at the relevant time drunk and that the Centennial Hall is a public place. But the fact also remains that the defendant is not charged with being found drunk in or on any public place under section 3 of the Summary Offences Act 1967. So the issue for this court to determine is whether or not the defendant was informed of his arrest, whether or not he was arrested and if in fact arrested, whether or not there is sufficient evidence to show that he has a case to answer for resisting arrest.

15. The relevant aspect of Sergeant Edward's evidence with regard to the administration of the arrest is evidence in chief he said:

"I got off from the vehicle went to him (defendant). I was about to arrest him. I grabbed him by the shirt and there were other persons intervening my arrest. I cannot tell him what he was being charged with because of the person intervening"

16. When further asked in examination in chief how were you trying to arrest him Sergeant Edward answered:

"I grabbed him by the shirt and I was about to tell him what he was charged with but the other intervened. So I cannot arrest him."

³ Section 6(1) Summary Offences Act 1967

17. Sergeant Edward gave evidence that the other person who was intervening was Oaeon Solomon and that he Mr. Solomon went in between him and the defendant and was trying to set his hand off the defendant. Sergeant Edward's further gave evidence that the defendant at that time was slapping his hand like he (defendant) was trying to run away. The defendant missed his hand and ended up slapping Sergeant Edward in the face, it was at this point in time that Sergeant Edward let go of the defendant. Sergeant Edward gave evidence that the defendant ran away and he chased after the defendant. The defendant then fell on the gravel on the road and it was there and then that Sergeant Edward grabbed the defendant and told him(defendant) that he will be charged with resisting arrest and drunk and disorderly. Sergeant Edward then escorted the defendant to the police vehicle. It was put to Sergeant Edward:

Q: Sergeant stated earlier that you chased after Namo and he fell and you took him to the police vehicle Namo comply?

A: Yes he complied when I escort him

Q: When escorted Namo to police vehicle where was Oaeon?

A: He was following us to the vehicle still intervening

18. Sergeant Edward's answers to the questions as outlined above will be discussed later. But suffice to say, at this stage that on the evidence, no evidence at all has been elicited from Sergeant Edward that he informed or told the defendant that he was under arrest. Sergeant Edward himself gave evidence that he did not inform the defendant of the charges against him because after he had grabbed the defendant's shirt and as he was about to inform him (defendant) of the charges Oaeon Solomon intervened. This was before Sergeant Edward let go of the defendant.

19. In *Daniel v Republic*⁴, Thompson Chief Justice noted that,

*"The other facts were not clearly stated to the District Court. At no time apparently was the appellant told that he was to be arrested or why. The sequence of events as related is that the police officer told the appellant that he was drunk, the appellant became angry and stood up to leave the police station and the police officer then caught hold of him. As being drunk in a public place is an arrestable offence against section 3 of the Police Offences Ordinance 1968, the police officer was acting lawfully but should have told the appellant why he was arresting him. Possibly he did so, but that is not included in the facts as stated to the District Court. If he did not, it is questionable whether the manner of arrest was lawful and, if the appellant's offence had been one of assault, he might have had a defence of self-defence."*⁵


⁴ *Daniel v Republic* [1976]NRSC6;[1969-1982]NLR(D)53(22 October 1976)

⁵ *Daniel v Republic* [1976]NRSC6;[1969-1982]NLR(D)53(22 October 1976) at page 2 paragraph 2.

20. In this case now before me, there is no evidence to show that the defendant was informed that he was under arrest or he was being arrested before Sergeant Edward grabbed his shirt. The evidence is also that Sergeant Edward never informed that defendant of the reason for his purported arrest before he grabbed the defendant's shirt and by the time he was going to inform the defendant of the reason for his arrest, Mr. Oaeon Solomon intervened. The defendant later freed himself from Sergeant Edward and ran away but when he fell down, Sergeant Edward grabbed hold of him informed him of the reason for his arrest and led him to the police vehicle and the defendant complied.

21. Applying the principle and observations made by Thompson Chief Justice in Daniel v Republic⁶ I find that the defendant was never informed that he was under arrest or was being arrested before Sergeant Edward grabbed his shirt. I also find on the evidence that the defendant was never informed of the reason for his purported arrest before Sergeant Edward grabbed his shirt. I find that the purported arrest of the defendant on the 2nd March 2013 was unlawful. The defendant in this case was therefore entitled to use reasonable force to release himself from Sergeant Edward I find that the defendant has no case to answer for resisting arrest. I acquit the defendant

Dated this 9 March 2016


Emma Garo
Resident Magistrate



⁶ Daniel v Republic[1976]NRSC6;[1969-1982]NLR(D)53(22 October