IN THE DISTRICT COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No. 18 of 2020

BETWEEN: **REPUBLIC OF NAURU**

PROSECUTION

AND: **THAGGARD DUBURIYA**

DEFENDANT

BEFORE: Resident Magistrate Mr. Vinay Sharma

DATE OF TRIAL: 16, 17, and 18 January, 26 and 27 March, and 13 June 2024

DATE OF JUDGMENT: 27 August 2024

APPEARANCE:
PROSECUTION: W Deiye

DEFENDANT: 16 – 18 January 2024: A Lekenaua
26 & 27 March 2024: T Tannang
13 June 2024: D Aingimea

JUDGMENT

INTRODUCTION

1. The defendant is charged as follows:

COUNT 1

Statement of Offence (a)

Interfering with emergency activity: *Contrary to Regulation 9(1) and 4(a) and 30(1) of the National Disaster Risk Management Act 2016 (Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulations SL No. 4 of 2020 and Rule 11(a) of the Rules for Designated Residence, Order No. 2/2020 Gazette No. 82.*

Particulars of Offence (b)

THAGGARD DUBURIYA *on the 08th of April 2020, at Meneng Hotel, Meneng District in Nauru, failed to comply with the rules governing the occupation of Designated Residences in entering the Designated Residence without the approval or the authorization of the Secretary.*

COUNT 2

Statement of Offence (a)

ESCAPE FROM CUSTODY: *Contrary to Section 229 of the Crimes Act 2016.*

Particulars of Offence (b)

THAGGARD DUBURIYA *on the 08th of April 2020 at the Nauru Police Force Station, Yaren District, escaped from lawful custody.*

2. The prosecution opened its case on 16 January 2024 and closed its case on 18 January 2024. The defendant's counsel made an application for "no case to answer". During the hearing of the "no case to answer" application on 24 January 2024, the Director of Public Prosecutions Ms Driu entered an appearance, and advised the court that she would be making submissions on the "no case to answer" application, however, she was not able to locate the trial notes prepared by Ms Deiye and needed time. I adjourned the hearing to 29 January 2024 at 10am.

3. On 29 January 2024 I heard the parties on the "no case to answer" application, and on 2 February 2024 I found that there was sufficient evidence to put the defendant on his defence. Thereafter, I proceeded with the trial. I also informed the defendant that he may choose to remain silent, give an unsworn statement or give evidence under oath.

4. On 2 February 2024, Mr Tannang appeared for the defendant and advised the court that Ms Lekenaua had resigned from the firm and that he needed time to consider the defendant's defence.

5. On 26 March 2024 the defendant's counsel opened the defence case and proceeded to call the defendant to give evidence under oath. The taking of the defendant's evidence was completed on 27 March 2024. After the defendant's evidence was taken, the defendant closed his case. The parties sought time to file written closing submissions.

6. Mr Tannang had difficulty preparing his closing submissions because he could not locate Ms Lekenaua's trial notes for the prosecution case. Further, he was preparing the closing submissions on instructions of his principle Mr David Aingimea. The audio recording of the trial was provided to the defendant's counsel.

7. On 13 June 2023 Mr Aingimea appeared for the defendant and made oral closing submissions. Ms Deiye filed written closing submissions and relied on it.

PRINCIPLES RELEVANT TO THE DECISION-MAKING

8. Before I proceed to consider the evidence of the witnesses, I will outline my role.

9. I am required to decide whether the prosecution has proven the essential elements of the alleged offences beyond reasonable doubt. The prosecution has the onus to prove the elements of each charge beyond reasonable doubt. The defendant is not required to prove or disprove anything. I cannot find the defendant guilty unless the evidence which is accepted by me satisfies me beyond reasonable doubt of his guilt. If there is an explanation consistent with the innocence of the defendant, or I am unsure of where the truth lies, then I must find that the charge has not been proven beyond reasonable doubt.

10. A reasonable doubt will result if in my mind I am left with an honest and reasonable uncertainty about the guilt of the defendant after I have given careful and impartial consideration of the evidence.

11. While the burden of proof is on the prosecution, it does not mean that every fact in dispute is to be proved beyond reasonable doubt, only the elements of the charge needs to be proven beyond reasonable doubt. However, evidentiary facts must be clearly proved before they are treated as established.

12. I have considered all the evidence placed before me. I must determine whether each of the witnesses are an honest, reliable and credible witness, and in doing so I can rely on the evidence that the witness has given and make a finding that the facts about which the witness has given evidence on has been proven. With this regard, I can accept part of the witness's evidence and reject part of that evidence or accept or reject it all. I am not required to give all evidence the same weight.

13. In assessing the credibility of a witness, I examined the veracity and/or sincerity of the witness to see whether he or she was trying to be truthful. Further, to assess the reliability of a witness, I examined the witness's ability to accurately recall a memory. The following are the factors that I considered:

    i. *ability and opportunity to observe events*
    ii. *firmness of memory*
    iii. *capacity to resist pressure to modify recollection*
    iv. *factors which might have resulted in reconstruction or mistaken recollection*
    v. *willingness to make concessions where recollection may be faulty, especially when favorable to the other party*
    vi. *testimony that seems unreasonable, impossible or unlikely*
    vii. *partiality/motive to lie*
    viii. *general demeanor*
    ix. *Internal consistency: does testimony change during direct or cross examination?*
    x. *External consistency: does testimony harmonize with accepted, independent evidence?*[1]

14. I remind myself that inaccuracy about secondary, marginal or unimportant facts often arises in cases because the witnesses are focused on central facts, and may differ on what evidence they give based on what they perceive to be essential. Further, witnesses also have different abilities of observation and recollection of their memories.

15. I must deliver my judgment in accordance with the evidence, which would require me to make findings of facts upon considering the evidence before me. With this regard, I am to carefully consider the evidence logically and rationally, bringing an open and unbiased mind to the evidence but I may use my common sense and experience in my assessment of the evidence before me. I must do this dispassionately, impartially, without prejudice, and without favour or ill-will.

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[1] ***R v Killman*** [2024] BCPC 104

16. From the established facts, I may draw a reasonable inference, which must be a justifiable inference and drawn beyond reasonable doubt. I must not draw an inference from the direct evidence unless it is a rational inference in all the circumstances. Further, I may only rely on an inference as proof of an element of an offence.

17. The defendant did not have to give evidence during his trial, however, he gave evidence in his defence. His evidence is no better or worse than the evidence of the other witnesses just because he is the defendant. I must approach his evidence in the same way that I would approach the evidence of any other witness. I must also remind myself that the defendant did not assume any onus to prove anything at the hearing when he decided to give evidence in his defence. I can only find the defendant guilty of the alleged offences after I have considered all the evidence, and having done so I have rejected the defendant's evidence, and accept beyond reasonable doubt the prosecution's evidence in relation to the essential elements of the alleged offences.

18. I must emphasis that in reaching my decision, I am not required nor is it necessary for me to articulate findings about every part of the evidence. All I have to do is determine whether the prosecution has proven all the elements of the alleged offences beyond reasonable doubt. With that regard, I may have to resolve some primary disputes over the facts.

19. I have considered all the evidence before me, and I note that the evidence in this case were not in substantial conflict with each other. I will summarize most of the evidence before me, and will discuss the parts of the evidence which are essential to my analysis.

PROSECUTION'S CASE

20. On 16 January 2024 the counsel for the prosecution opened the prosecution case and called two witnesses, namely, Jesse Deniko Jeremiah ("PW1") and Constable Moffat Mobit ("PW2").

21. On 17 January 2024 the counsel for the Republic called their third witness, namely, Sergeant Priscilla Dake ("PW3"). Their fourth witness, namely, Starleiy Duburiya ("PW4") did not attend court on the same date. A bench warrant was issued for his arrest and production. He was produced on bench warrant on 18 January 2024 and gave evidence thereafter. The bench warrant was cancelled accordingly.

22. I have considered all the evidence given by the prosecution witnesses. I find them to be both credible and reliable. A summary of the prosecution witnesses' evidence are as follows.

Evidence of PW1

23. PW1 is currently working for the Department of Fisheries. At the time of the offence he was employed as a security officer for a private company, namely, JHSS Security Company, which was tasked of securing the quarantined area at Meneng Hotel. A boundary was created at Meneng Hotel with two rows of temporary (moveable) fences which were approximately 5 meters apart. On 7 April 2024 he was on shift from 11pm to 6am next day. At around 3am PW1 was stationed at the Meneng Hotel's front gate, and was in charge of the monitoring of people entering and exiting Meneng Hotel. He explained that no one entered the quarantine area at night. He gave evidence that the defendant approached him that night at the front gate and asked him if he could give two meat pies to his girlfriend who was in one of the rooms designated for quarantine.

24. PW1 took the meat pies and placed them on a table within the boundary enclosed by the temporary fencing, where items brought for the persons held in quarantine is kept for pick up. The defendant went to the car park area after giving PW1 the meat pies and stayed there. The defendant's girlfriend picked the two meat pies about 15 minutes later. The defendant asked PW1 if he could speak to his girlfriend over the fence after she had gone back into her room. PW1 sought instructions from his superiors. Then he advised the defendant where to go and wait so he could talk to his girlfriend over the fence. The defendant walked to the area but instead of waiting for his girlfriend he started to break through the temporary fencing and go towards the block where his girlfriend was purportedly quarantined.

25. The defendant had broken through the two layers of temporary fencing and had reached the first block where his girlfriend was quarantined in a designated residence. The defendant was making his way up the stairs. PW1 started running towards the defendant, he was followed by a police officer, known by him as Moffat ("PW2"). PW2 overtook him, so PW1 went to mend the temporary fencing. PW1 couldn't see PW2 and the defendant from where he was standing because the stairway was obstructing his view. However, he could hear the commotion, shouting and banging on the walls. Later he heard someone rolling down the stairs. Then he saw one of the residents in a kneeling position on the pavement. At this point, PW1 ran to the stairway to help PW2.

26. When PW1 reached the stairway, he observed that the resident who had rolled downed the stairs was ok. So, he went to assist PW2, who was trying to restrain the defendant at the top of the stairway. He also saw another resident, namely Bong Quadina who was being kept away from the defendant by PW2. PW2 told PW1 to call the police, so he ran to his team leader at the gate to call the police. After that PW1 went back to assist PW2. However, PW2 had brought the defendant down the stairs and had taken

him out the fenced boundary.

27. Once outside the fenced boundary, the defendant left on his motorbike. However, he returned and told PW1 that he had dropped his mobile phone in the cordoned zone. PW1 got it for him. A police vehicle arrived to the scene of the alleged offence. Police statements were taken, and the defendant was taken with them and another police officer took the defendant's motorbike.

28. In cross-examination, PW1 gave the following pertinent evidence:

i. That he was not given any training on how to deal with Covid-19 security matters when he was employed as a security officer during Covid-19 outbreak.

ii. That he did not know the names of the blocks/buildings at Meneng Hotel.

iii. There was no notice informing the public to "keep out".

iv. There was no notice informing the public that the fenced area is a "quarantine zone".

v. Public announcements were made that Meneng Hotel, Budapest Hotel and RON Hospital were designated as "quarantine zones" during the pandemic.

vi. That the whole of Meneng Hotel was not a designated "quarantine area".

vii. That person's being quarantined can be visited between 10am – 10pm.

viii. The temporary fencing was approximately 2 meters high, it was light and easy to move.

ix. PW1 gave vague instructions to the defendant on what to do when he told him go to near the fence, but he knew that everyone knew that the boundary is a "quarantine zone" and didn't expect the defendant to break through it.

x. Police came in a can caged vehicle.

xi. Was not sure which part of the police vehicle the defendant was taken in.

Evidence of PW2

29. PW2 gave evidence that on 8 April 2024 he was stationed at front gate of the Meneng Hotel on a special roster. He was assisting with the security of the quarantine residence.

30. At around 3am on 8 April 2024 he came across the defendant. He identified the defendant in the dock. He stated that the defendant walked past him. He asked the

defendant "whats up?" The defendant told him "Ok. All good". After the defendant walked past PW2, he ran towards a part of the first layer of fencing and removed it. At this point PW2 was of the impression that the defendant was "messing around" with him. But the defendant then went towards the second layer of fencing and remove it and started going towards the building. At this point PW2 started to run towards the defendant. When PW2 reached the second lawyer of fencing, the defendant had reached the stairway at the middle of the building and was walking up the stairs. He managed to catch up with the defendant half way up the stairs. He saw a person whom he knows as "Bong" at the top. The defendant was making his way to Bong. Another person whom PW2 knows as "Starsky" was at the half-way of the stairway and was trying to push PW2 down stairs. They were going downwards. He also saw the defendant's girlfriend but does not recall the exact place she was standing.

31. Starsky and Bong were drunk. While they were at the stairway PW2 saw one security officer making his way to them. He told the security officer to call the police. Thereafter, PW2 took the defendant down the stairs and took him outside. The defendant then went in his bike and PW2 went to fix the fence and was told to remain in the "quarantine area". After a while the defendant came back to look for his mobile phone, he was told by a person named "Abwit" to stay back and wait for the police. After a while the police arrived. PW2 named the two police officers who arrived at the scene of the alleged offence as "Pansia" and "Starleiy". The defendant was outside the gate when the police arrived. The police then took the defendant.

32. PW2 gave the following evidence in cross examination:

i. He did not hear the police arresting him from where he stood.

ii. He couldn't recall if the defendant was handcuffed.

iii. He was not given any set of rules or protocols on how designated residents are to be secured. He was just told to assist with the security. The security company was responsible for the secured area. He was there only to assist them.

iv. He did not recall if there was any notice that the area was a "quarantine zone" or "restricted area".

v. There was sufficient lighting.

vi. He was the first one to see the defendant go into the secured area. He could not see the security from the place he was standing.

vii. He was of the impression that visitors could come anytime but had to talk from outside the fence.

Evidence of PW3

33. PW3 gave evidence that on 8 April 2020 she was informed of a report from Meneng Hotel by Senior Jody Edward. The report was with regard to a disturbance. When PW3, Senior Pansia Depoudu, and officer Starleiy Duburiya ("PW4") arrived at Meneng Hotel. The defendant's girlfriend was at the side of the road outside the restricted area, yelling to the police to arrest the defendant for assault. PW3 sent Senior Pansia Depoudu to the defendant's girlfriend and told PW4 to arrest the defendant. Once PW3, PW4 and the defendant reached the police station, PW3 informed the officer at the front desk to assist PW4.

34. Later PW3 came out of the reception and came across PW4 telling the front desk officer that the defendant needed help because his stomach was aching. PW4 returned to the police vehicle and found that the defendant had left the vehicle.

35. Police were re-dispatched for the defendant's arrest. He was re-arrested on the same day and was arrested from his home. After his re-arrest the defendant was detained in a cell,

36. PW3 gave the following evidence during cross-examination:

    i. She couldn't recall the time when they received the report.

    ii. She had instructed arresting officer PW4 to arrest the defendant after statement of his girlfriend had been taken by Senior Pansia.

    iii. Defendant's arrest was based on defendant's girlfriends report.

    iv. She stated that she was 10 – 15 meters away from the arresting officer and the defendant at the time of the arrest and it was still dark during the time of the arrest.

    v. Didn't record anything in her notebook.

    vi. She saw PW4 escort the defendant side-by-side to the police vehicle. The defendant was not handcuffed and she could not see whether PW4 was holding the defendant's hand.

    vii. She did not hear what was told to the defendant at the time of arrest.

    viii. The defendant was sitting in the back of the police vehicle in the "cage". The "cage" was locked from the outside. PW4 opened the "cage" and went to the front desk to inform them that defendant was feeling sick and had asked to use the toilet.

ix. She stated that PW4 had taken less than 5 minutes to come and tell her and front desk officer that the defendant was not feeling well. PW3 told PW4 to go back and assist the defendant. PW4 went back to the police vehicle to assist the defendant, however, he returned and informed them that the defendant was nowhere to be found. They searched inside and outside the police station and could not find the defendant.

x. The re-arrest was effected within 1 hour from the alleged escape by PW4.

xi. When told that the defendant's instructions were that he went to the toilet, PW3 stated that the defendant did not tell them that he wanted to go to the toilet. All he said was that his stomach was paining.

Evidence of PW4

37. PW4 is currently employed by WASDA. At the time of the offence was a constable. He gave evidence that on 8 April 2024 he, together with Senior Pansia and Sergeant Priscilla attended to a report at Meneng Hotel. When they arrived at Meneng Hotel, he saw the defendant outside the gate at Meneng Hotel. He was in an argument with his girlfriend. Sergeant Priscilla instructed him to get the defendant and put him into the caged police vehicle. PW4 then went to the defendant and tapped him on his back and told him "lets go". He did not say anything else and did not inform him of the reasons for the arrest, nor did he caution the defendant. Then the two went to the caged police vehicle and waited there for Sergeant Priscilla and Senior Pansia to finish talking to the defendant's girlfriend.

38. PW4 stated that when they reached the police station Sergeant Priscilla and Senior Pansia went ahead of him to get Senior Jody to assist him to escort the defendant to the cell. Senior Jody came out and they talked for a while and she went back in. At that point PW4 asked the defendant that you know that "you are going in, right?" and he answered yes but that he was having a stomach ache and if he could give him some time and that he just wanted to hang around outside for a while and let the defendant out of the caged vehicle. While the defendant was outside the car, he asked PW4 if he could get Senior Jody again. PW4 left the defendant and went to the front door and called out to Senior Jody that the defendant wanted to see her. When he looked back the defendant was gone and he could not see him anywhere.

39. When PW4 realized that the defendant had allegedly escaped, he ran towards to the car park to check if the defendant was there. He also ran to the sports complex. The defendant was not at either of the places. The securities who were there informed him that someone had gone past them. PW4 returned to the police station and informed the others of this. They got onto the police vehicle and went to search for him. They searched for him at several locations. "Chief of Police" called and informed them that the defendant was at his place at Location. The defendant was re-arrested at Location.

40. PW4 said that at the time of the arrests he was new to the job and was not aware of the police procedure on arrest. The defendant's counsel did not cross-examine PW4.

DEFENDANT'S CASE

41. The defendant gave evidence under oath, and thereby, became a witness in his defence. I have considered his evidence in its entirety. The defendant's evidence for most part of it is credible and reliable. However, there were instances during his cross-examination when he was evasive. Those parts of the evidence are not critical to the essential elements of the alleged offences contained in count 1 and 2 of the charge.

42. DW1 gave evidence that at the time of the offence he was a police officer. On 8 April 2024 he went to Meneng Hotel to give food to his girlfriend who was quarantined at Meneng Hotel in a designated residence. He went to Meneng Hotel on his motorbike from his home. When he reached Meneng Hotel he spoke to PW1. He asked PW1 how he could speak with his girlfriend. PW1 told him to go to the "other side and meet her there and talk to her there". PW1 did not give any other instructions. There was no public notice posted that the area is a "designated place".

43. DW1 stated that when he went to the "other side and no one was there". He waited for PW1 to come to him and tell him where to go. He could see PW1 from where he was standing but PW1 did not come to him. Then he removed the first layer of the fencing, and when he reached the second layer of fence he turned around to look for his girlfriend. The fence was light. DW1 stated that PW1 could see him and what he was doing. He waited for PW1 to meet him, and that PW1 did not come to him so he removed the second layer of the fencing and made his way to the stairway where he met Starsky Dagagio. Starsky grabbed his shirt and the two started to fight at the stairway. He observed that Starsky was intoxicated. PW2 came and stopped the fight. DW1 then followed PW2 out of the restricted area. He left Meneng Hotel on his motorbike, and later returned to get his mobile phone. Upon his return he met with the police officers at the scene, and spoke to one of them, and that both of them were just telling "stories". Afterwards, that police officer told DW1 to go with him. The police officer did not tell him that he is arresting him, nor was he cautioned.

44. DW1 went with the police officers to the police station. When he reached the police station he was not advised of why he was taken there, and what they intended to do with him. DW1 then asked PW4 to call Senior Jody Edward. Senior Jody did not come to him, so he went to the toilet. When he came back from the toilet to the front of the police station, the police officers in the front were not there. He waited for about 10 minutes. After that he called for his transport, and it came. There was no police officer around.

45. DW1 gave the following evidence during his cross-examination:

i. DW1 accepted that there was an outbreak of Covid-19 at the time of the alleged offending. Further, he accepted that restrictions had been put in place by the government, and those restrictions had been disseminated to the members of the public.

ii. DW1 accepted that he knew that Meneng Hotel was one of the quarantine areas. He also knew the reasons why a person is quarantined.

iii. DW1 accepted that the reason he gave the food to the security officer to give to his girlfriend was that "people are not allowed inside the quarantine place".

iv. DW1 accepted that PW1 didn't tell him to remove the fences. He accepted that he voluntarily went through the fences without approval because he really wanted to talk to his girlfriend. The fences were temporary in nature and could be moved without damaging it.

v. DW1 gave evidence that PW4 did not tap his shoulder when he told him to follow him.

vi. DW1 gave evidence that he did not recall PW4 telling him that "you know why you going in right?".

vii. DW1 gave evidence that when PW4 went to call Senior Jody he went to the toilet and that there are two doors leading to the toilet, implying that it is not necessary that the police officers in the front would have seen him going to the toilet.

viii. DW1 gave evidence that the receptionist at the front desk would not be able to see someone outside the reception if that person is standing on the side.

ix. DW1 accepted that he did not go inside to see PW4 or the other police officers at the front desk, while he was waiting outside as claimed by him.

x. DW1 accepted that PW4 did not tell him to leave the police station nor did he ask PW4 to leave the police station, and yet he left the police station.

46. In re-examination, DW1 gave the following evidence:

i. DW1 was aware that Meneng Hotel was a restricted area. However, he did not know what were the restrictions.

ii. DW1 came to the Meneng Hotel with the intention of asking the security guards

to talk to his girlfriend and to follow their instructions thereafter.

ANALYSIS

Count 1

47. For count 1, the defendant is alleged to have interfered with emergency activity in breach of Regulations 9(1) and 4(a) and 30(1) of the Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulations 2020 and Rule 11(a) of the Rules for Designated Residence 2020.

48. The particulars of the alleged offence are that the defendant on 8 April 2020 entered a designated residence situated at Meneng Hotel without the approval or authorization of the Secretary for Health and Medical Services in breach of the aforementioned rules and regulations.

49. Regulations 9(1)&(4)(a) and 30(1) of the Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulations 2020 provides as follows:

> ***9 Rules governing the occupation of designated residences***
>
> *(1) The Minister or any other authorised person may make rules governing the use and occupation of the designated residences.*
>
> ...
>
> *(4) The rules made under subregulation (1) may provide for the:*
>
> *(a) prohibition of a person or class of persons from entering or leaving the designated residence without the approval or authorisation of the Secretary;*
>
> ...
>
> ***30 Offence***
>
> *(1) Save for Regulation 25, a person who contravenes or fails to comply with these Regulations, an Order or Rules made under these Regulations commits a strict liability offence and is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 6 months or to both.*
>
> ...

50. Order 1 of 2020 made pursuant to the Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulations 2020 provides the following designated residences:

PURSUANT to the powers vested in me under Regulation 7, I, Lionel Rouwen Aingimea, MP, Minister for National Emergency Services, do hereby ORDER the following places to be designated residences for the purposes of the Coronavirus (COVID-19):

(a) Designated Residence - Transit Stations:
(i) Budapest Hotel;
(ii) Meneng Hotel:
- *Dens Block: Rooms 1–14;*
- *Lads Block: Rooms 15–22;*
- *Paks Block: Rooms 23–28;*

(iii) Anibare Village:
- *F Block: Rooms 1–16;*
- *G Block: Rooms 1–20;*
- *H Block: Rooms 1–20.*

(b) Designated Residence - Observation Station
Menen Hotel:
- *Tom's Cabin: Rooms 1–14;*
- *High 5: Rooms 1–12;*
- *G Block: Rooms 1–14.*

(c) Designated Residence - Treatment Station
RON Hospital:
- *Acute Block.*

51. Rule 11(a) of Order 2 of 2020 made pursuant to the Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulations 2020 provides as follows:

11 Visitors not allowed
(a) Visitors are not permitted at the Designated Residence

52. Order 1 of 2020 made pursuant to the Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulations 2020 designated rooms at Meneng Hotel as "Designated Residences". Order 2 of 2020 made pursuant to the Management and Minimisation of the Impacts of Coronavirus (Covid-19) Regulations 2020 provides rules in relation to the "Designated Residences". Upon reading Order 2 of 2020, it is clear that the references made to the "Designated Residences" therein refers to the rooms that were designated as "Designated Residences".

53. In light of the above, the elements of the offence for count 1 is as follows:

i. Defendant
ii. Without approval or authorization of the Secretary

iii. Entered a room that is designated as a "Designated Residence"

54. There is no dispute as to the identity of the defendant. The evidence of all the witnesses, including the defendant, establishes that the defendant went to Meneng Hotel on 8 April 2020 to give food to his girlfriend who was a resident of a room at Meneng Hotel which was designated as a "Designated Residence". The prosecution did not lead any evidence as to the room number and the block in which the defendant's girlfriend resided at for quarantine purposes.

55. There is no dispute in the evidence before me, that the defendant did remove the temporary fencing and entered the area cordoned off by the two lawyers of fencing. Further, there is no dispute that the defendant and Starsky had an altercation at the stairway of one of the blocks at Meneng Hotel.

56. Further, there is no dispute that the defendant did not have the approval or authorization of the Secretary for Health and Medical Services to enter a "Designated Residence" at Meneng Hotel. Therefore, the first and second elements of the offence have been established.

57. With regard to the third element of the offence, there is no evidence before me to establish the fact that the defendant entered any of the rooms at Meneng Hotel that were designated as "Designated Residence". In light of this, the alleged offence in court 1 against the defendant is not made out.

Count 2

58. For count 2, it is alleged by the prosecution that on 4 April 2020 the defendant escaped from lawful custody from the Nauru Police Station in breach of Section 229 of the ***Crimes Act 2016.***

59. Section 229 of the Crimes Act 2016 provides that:

> ***229 Escape from custody***
> *A person commits an offence, if the person escapes from lawful custody.*
> *Penalty: 5 years imprisonment.*

60. The Court of Appeal of England and Wales in ***R v Dhillon***[2] at [21] of its judgment held that the following elements of the offence of escape from lawful custody must be proven by the prosecution:

> *21. In our judgment, these authorities demonstrate that the prosecution must*

[2] [2005] EWCA Crim 2996 (23 November 2005)

in a case concerning escape prove four things: -

i) that the defendant was in custody;

ii) that the defendant knew that he was in custody (or at least was reckless as to whether he was or not);

iii) that the custody was lawful; and

iv) that the defendant intentionally escaped from that lawful custody.

61. In this case the prosecution alleges that the defendant was in lawful custody as a result of a lawful arrest by PW4 on 8 April 2024 at Meneng Hotel, and he escaped lawful custody at the Nauru Police Station. In other words, it is alleged that the defendant escaped from police custody after he had been arrested.

62. The Supreme Court of Nauru in ***Republic v Agege***[3] made observations with regard to the law surrounding the offence of escape from lawful custody.

63. Section 11(1) of the ***Criminal Procedure Act 1972*** makes the following provision in relation to mode of arrest:

> ***11 Mode of making arrest***
>
> *(1) In making an arrest the person making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.*

64. In ***Alderson v Booth***[4] it was held that *"to arrest a person is to restrict his freedom under lawful authority. It usually involves the taking hold of a person, through touching, no matter how slight is sufficient. Words alone may also amount to an arrest if the form of words used is calculated in the circumstances of the case to bring to a person's notice that he is under compulsion, and does bring it to his notice and he then submits to the compulsion."* Further, Glanville Williams, "***Requirements of a Valid Arrest***"[5] states that *"an imprisonment, or deprivation of liberty, is a necessary element in an arrest; but this does not mean that there need be an actual confinement or physical force. If the officer indicates an intention to make an arrest, as, for example, by touching of the suspect on the shoulder, or by showing him a warrant of arrest, or in any other way by*

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[3] [2021] NRSC 29; Criminal Case 20 of 2020 (3 August 2021)

[4] (1969) 2 Q.B. 216

[5] [1954] Crim LR 6 at 11

making him understand that an arrest is intended, and if the suspect then submits to the direction of the officer, there is an arrest. The consequence is that an arrest may be made by mere words, provided that the other submits."

65. The following is an extract from ***Blackstone on Criminal Practice 2013***, D1.16 – D1.18 in relation to arrests:

> ***D1.16*** *There is no necessary assumption that an arrest will be followed by a charge (Holgate- Mohammed v Duke [1984] AC 437). Although the power to arrest must be exercised for a proper purpose, it was affirmed in Chalkley [1998] QB 848 that the fact that an arrest is motivated by a desire to investigate another, more serious, offence does not render it invalid provided there are valid grounds for the arrest. An arrest for an offence will, however, be unlawful, even though made on the basis of reasonable suspicion, where the officer knows at the time of arrest that there is no possibility of a charge being made. Conversely, it is clear that, even though a complainant withdraws his complaint, a constable may still arrest a suspect where he hopes by so doing to obtain a confession (Plange v Chief Constable of South Humberside Police (1992) The Times, 23 March 1992).*
>
> *Reasonable force may be used to effect an arrest (PACE 1984, s. 117; Criminal Law Act 1967, s. 3; and see D1.7).*
>
> ***Communication of Fact of and Grounds for Arrest***
>
> *D1.17 Where a person is arrested (whether or not for an offence), otherwise than by being informed that he is under arrest, the arrest is unlawful unless he is informed that he is under arrest as soon as is practicable after the arrest (PACE 1984, s. 28(1)). If the arrest is by a constable, this applies even if the fact of arrest is obvious (s. 28(2)). Further, an arrest is unlawful unless the arrested person is informed of the ground for the arrest at the time of the arrest, or as soon as is practicable after the arrest (s. 28(3)). If the arrest is by a constable, this applies even if the grounds for arrest are obvious (s. 28(4)). The person must also be informed why arrest was believed to be necessary (for the purposes of s. 24(4)), although failure to do so will not render the arrest unlawful (Code G, para. 2.2).*
>
> *The test for whether the words used were sufficient is whether, having regard to all the circumstances of the case, the person arrested was told, in simple, non-technical language that he could understand, the essential legal and factual grounds for his arrest (Taylor v Chief Constable of Thames Valley Police [2004] 1 WLR 3155). According to PACE Code C, Note for Guidance 10B, and Code G, Note for Guidance 3, where a person is arrested for an offence he must*

be informed of the nature of the suspected offence, and when and where it was allegedly committed.

D1. 18 *The information need not be given by the arresting officer but may be given by a colleague (Nicholas v Parsonage [1987] RTR 199; Dhesi v Chief Constable of West Midlands Police (2000) The Times , 9 May 2000). Where no reasons are given at the time of arrest because it is impracticable to inform the suspect, acts done at the time of arrest do not become retrospectively invalid because of a later failure to inform him (DPP v Hawkins [1988] 1 WLR 1166; Lewis v Chief Constable of the South Wales Constabulary [1991] 1 All ER 206). The words used will suffice even though they are apt to describe more than one offence, provided that they aptly describe the offence for which the arrest is made (Abbassy v Metropolitan Police Commissioner [1990] 1 WLR 385; Clarke v Chief Constable of North Wales Police [2000] All ER (D) 477). An arresting officer may not, however, properly give reasons on which he does not rely; that is, he may not lead a person to think that he is arresting him for one offence when in truth he wishes to arrest him for another (Christie v Leachinsky [1947] AC 573; Abbassy v Metropolitan Police Commissioner; Waters v Bigmore [1981] RTR 356).*

In addition to the information required under s. 28, a person who is arrested, or who is further arrested (e.g., under the PACE 1984, s. 31), must be cautioned at the time of arrest or as soon as is practicable afterwards unless it is impracticable to do so because of his condition or behaviour at the time or he has already been cautioned immediately before arrest (e.g., where he was initially questioned regarding a suspected offence without being arrested) (Code C, para. 10.4, and Code G, para. 3.4). The terms of the caution are set out in Code C, para. 10.5 (see appendix 1). Failure to administer a caution does not render the arrest unlawful, although it may provide grounds for exclusion of evidence under the PACE 1984, s. 76 or 78 (Miller [2007] EWCA Crim 1891).

The nature and circumstances of the offence leading to the arrest, the reason(s) why the arrest was necessary, the giving of the caution, and anything said by the arrested person at the time of his arrest must be recorded by the arresting officer in his pocket book (or other method used for recording information) (Code G, para. 4.1). This record must be made at the time of the arrest unless impracticable, in which case it must be completed as soon as possible thereafter (Code G, para 4.2). If the arrested person is subsequently detained at a police station, the information given by the arresting officer as to the circumstances and reason(s) for the arrest must be recorded in, or attached to, the custody record (Code G, para. 4.3).

66. The Court of Appeal of New South Wales in ***State of New South Wales v Smith***[6] at [102], [103], [104], [138], [139], and [143] – [146] of its judgment made the following observations with regard to the legal principles applicable to a lawful arrest that would give rise to lawful custody of a person arrested without a warrant:

> *102. It is "of critical importance to the existence and protection of personal liberty under the law that the circumstances in which a police officer may, without judicial warrant, arrest or detain an individual should be strictly confined, plainly stated and readily ascertainable."[60] Arrest should be reserved for circumstances in which it is clearly necessary.[61] It is inappropriate to resort to the power of arrest when the issue and service of a summons would suffice adequately.[62]*
>
> *103. Because the law places a high value on personal liberty, a statute which authorises the detention of a person must be strictly construed. The protection of the subject lies in the nature of the test which has to be applied in order to determine whether, in a case of arrest without warrant, the requirement that there be reasonable grounds for the suspicion (or the belief) said to justify the arrest is satisfied.[63] ...*
>
> *104. The law does not lose sight of the public interest in the detection of crime and bringing those who commit it to justice. Thus, while it is "desirable as a general rule that an arrest should not be made until the case is complete ... if arrest before that were forbidden, it could seriously hamper the police".[65] In determining whether the arresting officer had the relevant state of mind (be it suspicion or belief), it is necessary to bear in mind that the Court is considering a preliminary stage of the investigation, rather than one requiring evidence amounting to prima facie proof.[66]*
>
> ...
>
> ***Arrest***
>
> *137. The requirements for an arrest are (1) communication of intention to make an arrest, and (2) a sufficient act of arrest or submission.[99] At common law, in order for the arrest to be lawful, communication of intention to make an arrest should normally include informing the person that he or she is arrested and informing the person of the reason for the arrest unless the circumstances make these things obvious, or if the person arrested prevents it.[100]*
>
> *138. There may be a process of arrest where, following a sufficient communication of intention to arrest and of the reason for arrest, the person in question flees, a step which can be sufficiently taken, for example, if the person being arrested makes it impracticable to complete the arrest by not submitting*

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[6] [2017] NSWCA 194 (4 August 2017)

and retreating into a house and not returning.[101]

...

Supplying the reason for the exercise of the power of arrest

143. The requirement that the person arrested should be informed of the reason why he or she is arrested is a matter of substance. It turns on the elementary proposition earlier stated in these reasons, and explained by Viscount Simon in Christie v Leachinsky, that a person is, prima facie, entitled to his or her freedom and is only required to submit to restraints on that freedom if he or she knows in substance the reason why it is claimed that restraint should be imposed.[105] His Lordship's statement reflects the common law in New South Wales and is reflected in the LEPRA, s 201.[106]

144. As Gleeson JA explained in NSW v Abed:

> *"[88] The rationale for the principle stated in Christie v Leachinsky was explained by Ipp JA in New South Wales v Delly [2007] NSWCA 303; 70 NSWLR 125 at [9] as follows:*
>
> > *The rationale underlying the rule that persons are entitled to know why they are being arrested is that they should be put in a position to be able to give an explanation of any misunderstanding, or to call attention to others for whom they may have been mistaken, or to give some other exculpatory reason, and to assert that further inquiries may save them from the consequences of false accusation: see, for example, Christie (at 588) per Viscount Simon and (at 591–592) per Lord Simonds; Taylor v Chief Constable of Thames Valley Police [2004] EWCA Civ 858; [2004] 1 WLR 3155 (at 3162, [21]) per Clarke LJ.*
>
> *[89] Further, as Beazley JA noted in Johnstone v New South Wales at [43], Ipp JA's observation that persons are entitled to know why they are being arrested, itself has an underlying rationale, namely, that a person is not to be deprived of her or his liberty without lawful cause.*
>
> *[90] Both parties referred to the decisians of New South Wales v Delly and Johnstone v New South Wales. It is sufficient to refer to two matters which those judgments may be taken to establish, as confirmed in Hamod v New South Wales (Hamod) [2011] NSWCA 375 at [425].*
>
> *[91] First, it is not necessary for the arrested person to be told the precise charge at the time of the arrest. Rather, the arrested person must be told why they are being arrested in terms that disclose why the person's liberty has been restrained. This requirement is sometimes described in terms that the arrested person be told the 'true reason' for*

the arrest, or the 'substance of the reason' for the arrest.

[92] Secondly, what is required will depend on the particular circumstances and will range from not needing to be told anything to being told both the facts which have given the police officer cause for suspicion that an offence has been committed, as well as what that suspected offence is: Johnstone v New South Wales at [56]. As this Court said in Hamod at [425]:

> *'The law does not require that the arrested person be given detailed particulars of why he or she is arrested. How much detail is required depends upon the circumstances of the particular case.' "*

145. Those circumstances might include, for example, that the person arrested must know the general nature of the alleged offence for which he or she is detained.[107] The question whether sufficient information has been given "has to be assessed objectively having regard to the information which is reasonably available to the officer".[108]

146. To elaborate on the point Gleeson JA made in NSW v Abed,[109] the reason given must be sufficiently precise as to make it clear to the person being arrested why the arrest is taking place which, in turn, requires the arrestor to notify the arrested person, at least in general terms, of the alleged offence or charge for which the arrest is being made.[110] The reason will not suffice if the arrested person could not know "in any meaningful way the charge which was likely to be laid".[111] Identification of conduct will often be sufficient.[112]

67. The Court of Appeal of New Zealand in ***Arahanga v R***[7] made the following observations with regard to the applicable legal principles in relation to a lawful arrest that would give rise to lawful custody of a person arrested without a warrant at [44] – [56] of its judgment:

Case law on arrest

[44] In Police v Thomson,[13] it was held that an "arrest" requires an actual seizure or touching of a person's body with a view to his or her detention or alternatively words of arrest and submission by that person to the arrest.

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[7] [2012] NZCA 480; [2013] 1 NZLR 189; (2012) 26 CRNZ 63 (18 October 2012)

[45] Thomson is consistent with the English decision of Alderson v Booth,[14] which was delivered shortly after Thomson. In that case, Lord Parker CJ, with whom Blain and Donaldson JJ agreed, noted that there were a number of cases, both ancient and modern, as to what constitutes arrest. He said that, while there was a time when it was held that there could be no lawful arrest unless there was an actual seizing or touching, it was quite clear that that was no longer the law.[15] Lord Parker CJ said that there may be an arrest by mere words, by saying "I arrest you" without any touching, provided that the defendant submits and goes with the police officer. Alderson v Booth is still considered to be good law in England on what constitutes an arrest.[16] It was cited with approval by this Court in Ahmed v R.[17]

[46] In Ballantyne v Police,[18] Simon France J suggested a third means of effecting arrest: words of arrest, combined with the ability at the relevant time to give physical expression to the arrest should the person not submit.[19] In that case, Simon France J also held that, if a person appeared to submit, this constituted submission.[20]

[47] This means that, under the case law to date relating to escaping from custody charges, there are three alternative means of effecting an arrest:

> *(a) the actual seizure or touching of a person's body with a view to his or her detention; or*
>
> *(b) words of arrest and submission to arrest, including apparent submission; or*
>
> *(c) words of arrest and the ability at the relevant time to give physical expression to the arrest (absent submission).*

[48] In order to sustain a charge of escaping lawful custody, the Crown must also prove intent (as well as the absence of any defences raised by the person charged such as a defence of unconscious or involuntary action).[21] Intent would be impossible to prove unless the prosecution proved that the arrested person knew that he or she was no longer free to leave.

[49] In the context of the New Zealand Bill of Rights Act 1990 (Bill of Rights), in R v Goodwin,[22] this Court defined arrest more widely than it had previously been understood. In Goodwin, it was held that an arrest can occur through words alone, without submission (real or apparent) or even the ability to give physical expression to the arrest. The Court defined arrest as the communication or the physical manifestation of an intention to apprehend and to hold the person concerned in the exercise or purported exercise of authority to do so. The arrester must make it plain that the subject has been deprived of the liberty to go where he or she pleases.[23]

[50] Three of the judges in Goodwin referred to the comments of Lord Devlin in Shaaban Bin Hussien v Chong Fook Kam,[24] which we also adopt:

> ***An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go.***

[51] While we accept that a wider concept of arrest may be applicable in the Bill of Rights context in order to ensure that the rights conferred in it are not frustrated,[25] we consider that the definition of arrest in Goodwin is an appropriate test for an escaping from lawful custody charge. The test is simple and effectively encompasses the earlier tests set out at [47].

[52] There are good public policy reasons (including safety of arresting officers) to use the Goodwin test as to whether there has been an arrest. It cannot be right that a person can avoid an escaping lawful custody charge if he or she runs away, knowing full well that he or she is under arrest and no longer free to leave.

The test

[53] We therefore hold that the test for whether there has been an arrest, as the basis of an escaping lawful custody charge, is:

> *(a) the arrester, by words or conduct, makes it clear to the person being arrested that he or she is no longer free to go where he or she pleases; and*
>
> *(b) the person being arrested knows that he or she is no longer free to leave.*

[54] Whether a person is arrested or not is a matter of fact. Where words are used to arrest a person, no particular form of words is required.[26] However, any words used must clearly bring home to a person that he or she is under compulsion and preferably the word arrest should be used.[27]

[55] Where the arrest is effected by physical conduct only, the conduct must unequivocally convey to the person being arrested that he or she is no longer free to leave. We would expect that words of arrest would accompany any physical manifestation of an intention to arrest in all but exceptional cases.

[56] We have summarised the test for arrest as it is relevant to this case. Additional issues may arise in other escaping lawful custody cases; for example,

whether the person being arrested did in fact escape from custody. In some cases too there may be additional issues in relation to intent; for example, whether a defence of unconscious or involuntary action is available to the defendant. (emphasis added)

68. Having considered the authorities above, I find that in order for the prosecution to sustain a charge of escape from lawful custody, it would have to prove that the defendant was in fact in lawful custody as a result of a lawful arrest. I adopt the test in ***Arahanga v R, supra*** for whether there has been an arrest, as the basis of an escaping lawful custody charge.

69. It is clear from PW4's evidence that he was not aware of the police procedures for arresting a person because he was just recruited and was new to the job. At Meneng Hotel all he did was tap the defendant's back and told him "lets go". He did not make it clear to the defendant that he was arresting him, and that he was not at liberty to leave. He also did not give reasons for the arrest nor did he caution the defendant. Further, when they reached the police station PW4 opened the cage of the police vehicle and let him out. At that point in time he told the defendant that "you are going in, right?". The defendant said "yes" but that he needed some time because he was having a stomach ache. Apart from this PW4 did not say anything else in relation to the defendant's purported detention. This alone also did not express PW4's intention to arrest the defendant, and putting him on notice that he was not at liberty to leave the police station.

70. The defendant gave evidence that he was a police officer at the time of the arrest, and that he was aware of the police procedures involved for arresting a person. He also gave evidence that when they reached the police station, he did not know what the police were intending do with him. He had informed the police officers that he was having stomach ache, and that he went to the toilet, when he came back the police officers weren't there.

71. The evidence of PW4 was that when he noticed that the defendant was not outside he ran to the car park and the sports complex, and when he returned he informed the other police officers that he could not find the defendant. Thereafter, they left in the police vehicle in search of the defendant. Further, PW3 gave evidence that they searched inside the police station and outside as well but when asked that the defendant had gone to the toilet, her response was that defendant did not tell them that he was going to the toilet and that all he said was that his stomach was paining. From the evidence of PW3 and PW4 I draw the inference that the police officers did not check the toilet to see if the defendant was there.

72. In light of this, I give the defendant the benefit of the doubt, and find that the defendant did go to the toilet. I give this benefit of the doubt because he voluntarily accompanied

the police to the police station. With this regard I refer to ***R v Iqbal***[8] in which the Court of Appeal of England and Wales made the following finding of law at [16] of its judgment in relation to a case in which police detained a suspect without arresting him:

> *[16] Although we understand how the police officers in this case came to involve themselves in a process which was intended eventually to culminate in the arrest of the appellant, they made a deliberate decision not to arrest him. The common law offence of escape from custody does not cover those who escape from police restraint or control before they have been arrested. We cannot widen the ambit of this criminal offence by making it apply to those whose arrest has been deliberately postponed.*

Further, at [14] of its judgment that Court of Appeal made the following findings in relation to a person voluntarily accompanying police for the purposes of police investigations:

> *[14] It is sufficient to end with a reference to section 29 of the Police and Criminal Evidence Act 1984, which provides that where, for the purposes of assisting with an investigation, a person has attended a police station voluntarily, or indeed any other place where a constable is present, or accompanies a constable to a police station without having been arrested, he is entitled to leave "at will" unless placed under arrest, and if a decision is taken by a constable to prevent him from leaving "at will", he must be informed that he is under arrest and indeed informed of the grounds for the arrest.*

73. Having found that the defendant went to the toilet, and upon his return the police officers had left the police station in search of him, which he was not aware of, the defendant was at liberty to leave the police station because he was not under arrest. The defendant was not aware that he was under arrest, nor have the prosecution proven beyond reasonable doubt that he had the intention to escape from lawful custody. In ***Arahanga v R, supra*** it was held that *"intent would be impossible to prove unless the prasecution proved that the arrested person knew that he ar she was no longer free to leave"*. Therefore, the defendant was attending to the police station voluntarily to assist in police investigations.

74. I find that the count 2 of the charge against the defendant for escape from lawful custody has not been made out.

FINDINGS

Count 1

75. On 8 April 2020 the defendant went to the Meneng Hotel to drop food for his girlfriend. He also intended to see his girlfriend and talk to her.

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[8] [2011] 1 Cr App R 24, [2011] EWCA Crim 273, [2011] 1 Cr App Rep 24, [2011] 1 WLR 1541

76. When the defendant reached Meneng Hotel, he asked PW1 if he could meet his girlfriend. He was told that he could meet her and talk over the temporary fencing. He was asked to go to a specific area of the temporary fencing to await his girlfriend.

77. The defendant waited for a while and started to remove the first layer of the temporary fencing. Thereafter, he removed the second lawyer of the fencing, and started to go towards the block in which his girlfriend was residing. There was no evidence as to the room in which his girlfriend was residing in. The room that she was residing in was the "designated residence" for the purposes of the count 1 of the charge against the defendant.

78. The defendant met Starsky at the stairway of the block in which his girlfriend is purported to have been residing at. He had an altercation with Starsky. PW2 broke off the fight between the defendant and Starsky. Thereafter, PW2 took the defendant out of the cordoned area at Meneng Hotel.

79. The defendant did not enter the room, that is, the "Designated Residence" of the defendant's girlfriend, nor any other room designated as such.

80. In light of the foregoing, I am not satisfied that the prosecution has proven its case against the defendant in relation to count 1 of the charge against him.

Count 2

81. On 8 April 2024 PW3, PW4 and other police officers attended to a report in relation to disturbance for which defendant was charged in count 1 of the charge.

82. PW4 was instructed to arrest the defendant by PW3. PW4 proceeded to the defendant and touched his back and told him "lets go". PW2 did not inform the defendant that he was being arrested and that he was not at liberty to leave. However, the defendant voluntarily accompanied him to the police vehicle. Therefore, the defendant was not under arrest at this point in time.

83. Once the police and the defendant reached the police station, the defendant was released from the cage in the police vehicle. At this point, PW4 told the defendant that "you are going in, right?". The defendant said "yes", and that he needed time because he was having stomach ache. Once again, the defendant was not informed that he is under arrest and that he is not at liberty to leave the police station. Therefore, the defendant was not under arrest at this point in time too.

84. When PW4 left the defendant to get Senior Jody, the defendant went to the toilet. When PW4 saw that the defendant had left the place he was at he ran to the car park and the sports complex. The other police officers checked inside and outside the police station. However, they did not check the toilet.

85. When the police officers could not find the defendant, they left in the police vehicle in search of the defendant. When the defendant returned from the toilet he couldn't see the officers. He waited for a while and called his transport to pick him up. Thereafter, he left the police station in his transport. The defendant did not intend to flee the police station, nor can it be said that the defendant intended to escape lawful custody. At this point he was voluntarily at the police station and was at liberty to leave the police station whenever he pleased.

86. In light of the foregoing, I am not satisfied that the prosecution has proven its case against the defendant in relation to count 2 of the charge against him.

VERDICT

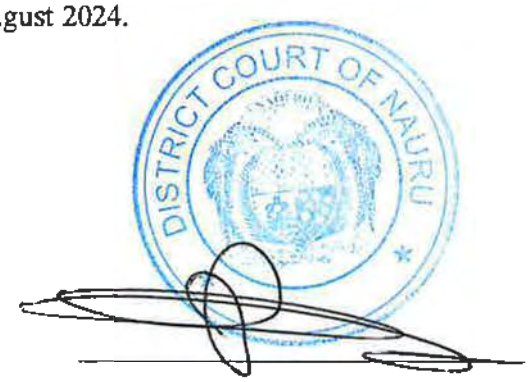
Count 1

87. For the foregoing reasons, I find the defendant not guilty of count 1 of the charge.

Count 2

88. For the foregoing reasons, I find the defendant not guilty of count 2 of the charge.

Dated this 27 day of August 2024.



Resident Magistrate

Vinay Sharma