



# JUDGMENT

## INTRODUCTION

1. The defendant is charged as follows:

### “COUNT 1

#### Statement of Offence

**INTIMIDATING A POLICE OFFICER:** *Contrary to Section 77A of the Crimes Act 2016*

#### Particulars of Offence

**RICHARD APADINUWE** on the 3<sup>rd</sup> of January 2024, at Nibok District in Nauru, intimidated OFFICER GABRIAL FRITZ in the execution of OFFICER GABRIAL FRITZ’s duties.

### COUNT 2

#### Statement of Offence

**OBSTRUCTING A PUBLIC OFFICIAL:** *Contrary to Section 242(a)(b) of the Crimes Act 2016*

#### Particulars of Offence

**RICHARD APADINUWE** on the 3<sup>rd</sup> of January 2024, at Denig District in Nauru, obstructed police officers, namely CONSTABLE GABRIEL FRITZ, SENIOR CONSTABLE OLIVER DIEMA & POLICE RESERVE PANIT NAMADUK by resisting the arrest of the said officers in the exercise of their function as public officials, and **RICHARD APADINUWE** believes CONSTABLE GABRIEL FRITZ, SENIOR CONSTABLE OLIVER DIEMA & POLICE RESERVE PANIT NAMADUK are public officials.”

2. The Prosecution opened its case on 17 March 2025.
3. On 26 March 2025, the Prosecution closed its case. Thereafter, the defendant’s counsel made an application for “no case to answer”. However, on 7 May 2025, the counsel for the defendant withdrew his application and consented to there being a case to answer against the defendant
4. On 7 May 2025, the defendant was put on his defence. Directions were given to him in relation to his right to choose to remain silent, give evidence under oath or make an unsworn statement in court. He decided to remain silent and did not call any

witnesses. The parties sought time to file written closing submissions. The Prosecution filed its closing submissions on 13 December 2024, and the defendant's counsel filed her closing submissions on 16 December 2024. I heard the parties' closing submissions on 16 December 2024.

5. I am to determine the following issues:
  - i. Whether the defendant is guilty of count one of the charges laid against him?
  - ii. Whether the defendant is guilty of count two of the charges laid against him?
6. The following are my reasons for this judgment.

### **PRINCIPLES RELEVANT TO THE DECISION-MAKING**

7. I will outline my role before I proceed to consider the evidence of the witnesses.
8. I am required to decide whether the prosecution has proven the essential elements of the alleged offence beyond a reasonable doubt. The prosecution has the burden of proving the elements of the charge beyond a reasonable doubt. The defendant is not required to prove or disprove anything. I cannot find the defendant guilty unless the evidence which I accept satisfies me beyond a reasonable doubt of his guilt. If there is an explanation consistent with the defendant's innocence, or I am unsure of where the truth lies, then I must find that the charge has not been proven beyond a reasonable doubt.
9. 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.
10. While the burden of proof is on the prosecution, it does not mean that every fact in dispute is to be proved beyond a reasonable doubt; only the elements of the charge need to be proven beyond a reasonable doubt. However, evidentiary facts must be clearly proved before they are treated as established.
11. I have considered all the evidence placed before me. I must determine whether each of the witnesses is 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 have been proven. Regarding this, I can accept part of the witness's evidence and reject part of it, or accept or reject it all. I am not required to give all evidence the same weight.
12. 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. Furthermore, to assess the reliability of a witness, I examined the witness's ability to recall memories accurately. 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?'*

13. 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. Furthermore, witnesses also have varying abilities in observation and recollection of their memories.
14. I must deliver my judgment in accordance with the evidence, which would require me to make findings of fact upon considering the evidence before me. In this regard, I will carefully consider the evidence logically and rationally, bringing an open and unbiased mind to the evidence, while also drawing on my common sense and experience in assessing the evidence before me. I must do this dispassionately, impartially, without prejudice, and without favour or ill-will.
15. From the established facts, I may draw a reasonable inference, which must be justifiable and drawn beyond a reasonable doubt. I must not draw an inference from the direct evidence unless it is a rational inference in all the circumstances.
16. The defendant did not give evidence in his defence, and he did not have to do so. I may not draw any adverse inference against the defendant for not giving evidence, unless the law permits me to do so. I can only find the defendant guilty of the alleged

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<sup>1</sup> *R v Killman* [2024] BCPC 104

offence after I have considered all the evidence, and have accepted beyond a reasonable doubt the prosecution's evidence in relation to the essential elements of the alleged offence.

17. I must emphasise 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 offence beyond a reasonable doubt. With that regard, I may have to resolve some primary disputes over the facts.
18. I have considered all the evidence before me. I will summarise most of the evidence before me, and discuss the parts of the evidence which are essential to my analysis.

#### **PROSECUTION'S CASE**

19. The prosecution called six witnesses, namely, Senior Constable Oliver Diema ("PW1"), Constable Christender Adam ("PW2"), Constable Gabriel Agege Fritz ("PW3"), Police Reserve Panit Namaduk ("PW4"), Sergeant Jamieson Laan ("PW5"), and Sergeant Dan Lobendahn Botalanga ("PW6").
20. I have considered all the evidence given by the prosecution witnesses. A summary of the prosecution witnesses' evidence is as follows.

##### ***Evidence of PW1***

21. PW1 gave evidence that on the date of the offence, he was stationed opposite "Quicks" at Nibok District. He was conducting a traffic blitz with Constable Christender Adam ("PW2"), Constable Gabriel Agege Fritz ("PW3"), and Police Reserve Panit Namaduk ("PW4").
22. PW1 gave evidence that when they were taking a break from the traffic blitz, he saw a motorbike, a black scrambler, pass by. There was a passenger on the motorbike. He assumed that he was under the influence of alcohol. At this point, PW1 was not questioned on issues relating to identification, as per the guidelines provided in *R v Turnbull (Raymond)* [1977] Q.B. 224 (9 July 1976).
23. PW1 gave evidence that he and the other members of his team, who were conducting the traffic blitz with him, trailed the defendant to the "T-Shop" at Denig District. PW4 was driving the police vehicle in which they were travelling. The motorbike which the defendant was driving came to a stop near the "T-Shop". PW4 drove up to the motorbike and cut off the defendant. The motorbike was positioned on the driver's side of the police vehicle, and a wall was located on the opposite side of the

police vehicle. The motorbike was between the police vehicle and the wall. There wasn't enough space in between.

24. PW1 gave evidence that he heard PW4 speak to the defendant and told him that he would be arrested and told him of his rights. He stated that the defendant was not complying and was being aggressive, challenging the officers to a fight. PW1, along with another officer, exited the police vehicle and approached the defendant. The defendant threw a punch at PW3 and missed. PW1 tried pushing him, and they both fell. The third officer came to assist, and together they managed to put the defendant into the police van's "cat-cage".
25. Thereafter, the defendant was taken to the police station. The defendant was still resisting as PW1 and the officers were escorting him into the police holding area. That's when he landed a strike, and they struggled. PW1 stated that it was at this stage that the defendant tore PW1's uniform.
26. PW1 stated that PW2 was speaking with the passenger.
27. During cross-examination, PW1 gave evidence that he was at the bus bay (outside the police vehicle) when the motorbike passed them. He stated that the motorbike was speeding and "zig-zagging". He could clearly observe that the driver was intoxicated. However, he confirmed that no tests were ever conducted on the defendant to determine his blood alcohol level. Further, he stated that the defendant refused to cooperate with the police at the police station, which is why they were not able to do the breathalyzer test.
28. PW1 gave evidence that they stopped the defendant at the "T-Shop" because he was under the influence of alcohol. He was of the view that the defendant was intoxicated because of the way he was behaving during the traffic stop. PW1 confirmed that PW4 parked the police vehicle very close to the motorbike, with no space between the two.
29. PW1 gave evidence that nothing was stopping the officers from arresting the defendant and that they did, in fact, complete the arrest. He stated that because three of them were there, they could complete the arrest. Further, he confirmed that the defendant challenging them to a fight did not deter them from completing the arrest.
30. PW1 confirmed that PW4 was in the police vehicle while giving instructions to the defendant, and that PW3 got out to approach the defendant. PW1 accompanied PW3 to the defendant. PW1 was the most senior-ranking officer at the time of the arrest.
31. During reexamination, PW1 clarified that PW4 came to assist him and PW3 to put the defendant into the police vehicle's "cat-cage". Further, he could tell that the defendant was drunk by the way he was driving.

### *Evidence of PW2*

32. PW2 gave evidence that on the date of the offence, he was stationed opposite “Quicks” at Nibok District. He was conducting a traffic blitz with PW1, PW3, and PW4.
33. PW2 recalls that at the time of the incident, at around 6 am, a motorbike went past them “zig-zagging”. He told his colleagues to follow the motorbike. Just like PW1, PW2 was not questioned on issues related to identification at this point, as per the guidelines provided in *R v Turnbull (Raymond)* [1977] Q.B. 224 (9 July 1976).
34. He observed that the passenger was leaning towards the driver in a drunken state (which was visually shown to the court). When saying that the motorbike was “zig-zagging”, he indicated that the motorbike was all over the place like a “zig-zag”.
35. PW2 gave evidence that they followed the motorbike and that they were separated for some time. They came across the defendant when they reached the “Welcome Stranger Store”. The defendant was turning into the road going to the “T-Shop”. The defendant turned onto the road leading to the “T-Shop” on their own, and the officers followed.
36. PW4 was driving. PW2 also stated that PW4 parked the police vehicle beside the motorbike. PW2 stated that PW4 spoke to the defendant, asking them if they had been consuming liquor. PW2 also said that PW4 told the defendant that they would be checked. It was then that the defendant began to get angry and use obscene language. PW2 stated that PW4 removed the key from the ignition key switch after PW4 informed the defendant that he would be checked.
37. PW2 stated that he approached the passenger and kept her away from the officers and from interfering with the police officers. He did not witness much of what happened during the arrest. He just heard a uniform being torn, but was not sure whose.
38. PW2 gave evidence that PW4 was in the police vehicle when PW1 and PW3 approached the defendant. PW2 stated that PW4 couldn’t come out of the police vehicle because the defendant’s motorbike had fallen towards the driver’s side of the police vehicle. PW4 asked PW2 to remove the motorbike. PW2 removed the motorbike, and then PW1 came out to put the defendant into the police vehicle’s “cat-cage”. The defendant was aggressive all the way to the holding cell. When the officers went to retrieve the passenger's phone from the defendant, the defendant threw a punch. The officers held the defendant, and it is at this time that the defendant tore PW1’s uniform.

39. PW2 gave evidence that PW3 was sitting in the front passenger seat, and that PW2 and PW1 were sitting in the back seat.
40. During cross-examination, PW2 confirmed that the officers and the motorbike that passed them got separated and that the officers met them at the junction leading to the "T Shop". He also confirmed that they followed the motorbike that passed them. He couldn't remember the speed at which they were travelling, but they were travelling at normal speed and caught up to the defendant whilst travelling on normal speed.
41. PW2 stated that there is quite a distance between "Quicks" and "Welcome Stranger Store".
42. PW2 gave evidence that he was in the police vehicle when the motorbike went by them. He stated that PW4 tooted the horn of the police vehicle to alert the defendant to stop his motor. The defendant complied and stopped the motorbike.
43. PW2 was reminded of his police statement on 29 December 2023. The statement was shown to him. Paragraph 6 of the statement was read to him. Paragraph 6 states that "we drove in and made a stop right next to them where reserve Panit tried to reach for the ignition and pulled out the key". PW2 clarified what he meant by this and stated that "after turning into the 'T-Shop', we stopped beside them. Panit reached out of the car and pulled out the key from the ignition".
44. Paragraph 7 of the statement was read too; it stated that "the driver then turned around and started acting aggressively towards us and challenged the male officers". PW2 stated that PW4 "took off the key in order to disable them from moving" and "prevent them from leaving us".
45. PW2 confirmed that that is not the correct approach to arresting a person. He also stated that after PW4 removed the key, PW3 got out and started talking to the defendant, who was acting aggressively, challenging the officers and using obscene language. The defendant punched PW3 while PW3 was talking to him. PW2 stated that the space between the motorbike and the police vehicle door was small. As the defendant and PW3 were moving away from the space, the motorbike fell towards the police vehicle's door. The motorbike prevented PW4 from exiting the police vehicle.
46. Counsel for the defendant put to PW2 that he was lying in his evidence in chief that PW4 pulled the key out of the ignition key switch after telling them they would be checked for alcohol. PW2 became evasive in his answer. PW2's police statement dated 29 December 2023 ("DE1") and addendum statement ("DE2") were tendered as evidence. Further, PW2 was also asked how the defendant could punch PW3 when he was on the motorbike (Scrambler being a bigger bike). PW2 once again became evasive in his answer.

47. PW2 confirmed that the defendant's conduct did not stop them from completing the arrest.

48. During re-examination, PW2 clarified why he made an addendum statement.

*Evidence of PW3*

49. PW3 gave evidence that on the date of the offence, between 5 am and 6 am, he was stationed opposite "Quicks" at Nibok District. He was conducting a traffic blitz with PW1, PW2, and PW4.

50. At the time when the "black scrambler" went past them, they were in the police vehicle. The motorbike was "swerving on the road", and the driver was driving it fast. Like the other witnesses, at this point, PW3 was not questioned on issues relating to identification, as per the guidelines provided in *R v Turnbull (Raymond)* [1977] Q.B. 224 (9 July 1976).

51. PW3 stated that PW4 was driving and PW1 was sitting in the front passenger seat. PW2 and PW3 were seated in the back passenger seat. PW3 stated that they were trailing the motorbike that went past them. PW4 signalled them to stop by flicking his headlight; however, they kept going and were still driving fast.

52. PW3 stated that when they reached "T-Shop" at Denig District, the defendant slowed down because of potholes. The police vehicle cut off the motorbike from its left side. There was a building on the right side of the motorbike.

53. PW3 stated he was the first one to get off. He approached the defendant. When he was about to reach the defendant, the defendant challenged him to a duel. PW3 was attempting to speak with the defendant. He could smell a strong odour of liquor. He asked the defendant not to make a scene. The defendant was still behaving aggressively towards PW3. PW3 also stated that after he told the defendant that he would be taken to the police station for being suspected of driving under the influence of alcohol, the defendant took a swing at him with a clenched fist. PW3 dodged the punch. PW1 approached PW3 and the defendant and restrained the defendant. The defendant wasn't complying, so PW1 and PW3 applied reasonable force to get the defendant into the police vehicle's "cat-cage". PW4 assisted them in putting the defendant into the "cat-cage".

54. PW3 stated that once they managed to put the defendant into the "cate-cage", he informed him that he was being arrested for driving under the influence of alcohol. He also stated that he told the defendant of his rights.

55. PW3 stated that PW4 drove the motorbike to the police station, and the others took the defendant to the police station. The defendant continued to be aggressive at the

police station. PW3 stated that he informed the defendant of the reason for his arrest and his rights once again at the police station. Photos taken of the torn shirt were tendered as evidence.

56. During cross-examination, PW3 stated that the motorbike went past them fast. However, he gave evidence that they were not driving fast when pursuing the motorbike.
57. PW3 stated that when they were pursuing the motorbike, they did not lose sight of it at any point in time before intercepting it. However, PW3 confirmed that they did not pursue the motorbike straight away. They were still observing how the motorbike was being driven. After 3-4 minutes, they trailed the motorbike. Furthermore, PW3 could not recall whether everyone was sitting in the police vehicle when the motorbike passed.
58. PW3 did not see what PW4 was doing when they intercepted the defendant at the “T-Shop”.
59. PW3 confirmed that no test for blood alcohol was done, nor did he offer it to him. He also confirmed that the defendant challenging him to a fight did not stop him from arresting the defendant.
60. PW3 stated that he approached the defendant from the back of the motorbike.
61. During reexamination, PW3 clarified that when the motorbike passed them, they pursued the motorbike after 3-4minutes from the passing of the motorbike.

#### ***Evidence of PW4***

62. PW4 gave evidence that on the date of the offence, between 5 am and 6 am, he was stationed opposite “Quicks” at Nibok District. He was conducting a traffic blitz with PW1, PW2, and PW3.
63. PW4 gave evidence that he heard a motorbike coming from the direction of Ewa District, travelling towards the direction of RON Hospital. The motorbike was speeding and sounded very loud. The motorbike was swerving from side to side. Like the other witnesses, at this point, PW3 was not questioned on issues relating to identification, as per the guidelines provided in *R v Turnbull (Raymond)* [1977] Q.B. 224 (9 July 1976).
64. PW4 was driving the police vehicle, and they followed the motorbike up until “T-Shop”. They followed the motorbike due to its speed. When the motorbike came to a stop near the “T-Shop”, PW4 pulled up beside the motorbike and took the key from

the ignition key switch. After removing the key, PW4 stated that he attempted to speak with the defendant, but the defendant quickly dismounted the motorbike and began acting aggressively. PW4 stated that the defendant pushed his motorbike towards the driver's side door of the police vehicle, because of which he could not get off the police vehicle.

65. PW4 stated that while trying to get out of the police vehicle, he noticed that the defendant and PW3 were struggling and moving towards the back of the police vehicle. PW4 stated that, as the defendant and PW3 went towards the back, PW2 picked up the motorbike and put it in an upright position. PW4 stated that he got out of the police vehicle and proceeded to the rear of it. There, he saw that PW3 and PW1 were trying to put the defendant into the "cat-cage". He stated that the defendant was behaving aggressively and refused to comply.
66. PW4 stated that he observed that the defendant was under the influence of alcohol.
67. PW4 stated that once the defendant was put into the "cat-cage", he was taken to the police station. He stated that the defendant was also aggressive at the police station. He noticed PW1's torn shirt at the police station.
68. During cross-examination, PW4 confirmed that he has not received any training that regular officers receive. He is a police reserve.
69. PW4 stated that all the officers were in the police vehicle when the motorbike went past. He also stated that it seemed the exhaust pipe of the motorbike that passed them must have been damaged, as it sounded too loud. PW4 stated that it was the loud sound that made him think the motorbike was speeding, but he confirmed that the motorbike was actually speeding.
70. PW4 stated that they observed the motorbike for a while, and then PW1 told him to follow the motorbike. He stated that he was driving fast, but the motorbike was being driven even quicker.
71. PW4 confirmed that they could only see the motorbike when they were on a straight stretch of road, that is, from "Coconut Tree Restaurant". He stated that the road turns a bend from where they were situated until the "Coconut Tree Restaurant", which is approximately 100 meters in distance.
72. PW4 said that when they reached "Coconut Tree Restaurant" he sped up to catch up to the defendant. He stated that when the defendant turned onto the road leading to the "T-Shop", he stopped the motorbike by himself. He also stated that he signaled the defendant to stop when catching up to it.
73. PW4 confirmed that he removed the key from the motorbike's ignition key switch

whilst he was in the police vehicle.

74. PW4 stated that the obscene language used by the defendant was not threatening, but he was challenging the officers, asking them why they stopped him or arrested him. He further confirmed that the obscene language used did not intimidate him from doing his duties.

***Evidence of PW5***

75. PW5 was the investigating officer. He provided evidence regarding his investigations and the record of the interview, which was not conducted because the defendant declined to participate.

***Evidence of PW6***

76. PW6 gave evidence in relation to his role concerning the record of interview.

**DEFENDANT'S POSITION**

77. The Defendant did not give evidence, nor did he call any witnesses. He is not required to do so. However, his counsel has maintained from the start that the arrest was unlawful.

**WHAT ARE THE ESTABLISHED FACTS?**

78. There are two crucial inconsistencies in the evidence that I wish to resolve before I proceed any further. With this regard, I refer to the Supreme Court of New Zealand's case *W (SC 38/2019) v R* [2020] NZSC 93 in which Winkelmann CJ made the following observations concerning the reliability of evidence at [225] of his judgment:

*[225] There is other relevant research which examines the reliability of evidence where a witness purports to have a verbatim or near verbatim recollection of conversations with another. Typically, the witness will give evidence without the aid of a recording of that conversation or a contemporaneous note. But research into human memory suggests detailed recollection of conversations is unlikely to be reliable. Jessica Roth, in her article "Informant Witnesses and the Risk of Wrongful Convictions", summarises this research as follows:226*

*Experimental research has demonstrated that all human memory is far more fragile than previously was thought, providing cause for skepticism about all witness testimony about past events. But studies have shown that memory of oral communications is particularly bad. In addition, conversational memory is "extremely malleable" and "strongly influenced by motivational biases." This suggests that we should be particularly concerned about informant testimony,*

*developed during proffer sessions with government agents, about the specifics of what a defendant said – where meaning and guilt may turn on the precise words used. Jurors, however, tend to be unaware of these weaknesses of human memory of conversation.*

79. I have considered all the evidence as a whole. I find that evidence given in relation to what an individual officer was doing, as opposed to what they saw or heard the other officers do, is more reliable. I find that the crucial inconsistencies in relation to the evidence that needs to be resolved are: (1) whether the officers had a direct line of sight of the motorbike when they were trailing it, and (2) whether PW4 took the key out of the ignition key switch of the motorbike before or after informing the defendant of the reason for the stop, and if being arrested, what were the reasons for the arrest.

***Direct line of sight during the pursuit of the motorbike***

80. It is clear from PW1's evidence that he was at the bus bay when the motorcycle passed. Furthermore, the PW3 stated that they waited 3-4 minutes before initiating their pursuit. This may be because they were observing the motorbike, and because it would have taken some amount of time, irrespective of how much, for PW1 to get into the police vehicle.
81. The road turns a bend a few meters from where the police officers were situated. A straight stretch of road comes up from "Coconut Tree Restaurant". Once the motorbike turns the bend, the police officers would lose sight of the motorbike. The evidence provided by PW2 and PW4 regarding losing sight of the motorbike is more reliable. I find that, in fact, the officers did lose sight of the motorbike for a period of time. This is a significant matter; once this happened, it created a doubt as to whether the defendant was the same person that they saw passing them by at Nibok District, especially when the motorbike was travelling fast as alleged. The officers would be required to investigate diligently to ensure that they have stopped the right person.

***What happened at the "T-Shop"?***

82. PW1 and PW3 gave evidence that they heard PW4 speak to the defendant before taking the key out of the ignition key switch.
83. PW2 gave evidence in chief that he heard PW4 speak to the defendant before taking the key out of the ignition key switch. However, in cross-examination, it was shown that his evidence in chief was inconsistent with his initial police statement. Furthermore, PW2 was evasive during his cross-examination regarding this issue.
84. PW4 gave evidence in chief that he did not speak to the defendant before pulling the key out of the ignition key switch. His evidence is the most direct and credible. In light of this, I find that, in fact, PW4 did not speak to the defendant before pulling out

the key from the ignition key switch. I accept PW4's evidence in chief in this regard.

85. I have considered the remaining parts of the evidence of the witnesses and find them to be reliable and accept them as the facts in this matter.

**WHAT ARE THE LEGAL PRINCIPLES IN RELATION TO THE "LAWFUL EXECUTION OF DUTIES BY A POLICE OFFICER"?**

86. The crucial deciding factor in this matter is whether the police officers were acting lawfully in the execution of their duties. If there is a finding that they were acting unlawfully, then the charges against the defendant are bound to fail.
87. The High Court of New Zealand in **Williams v Police [1981] 1 NZLR 108** at pages 111 & 112 made the following observations concerning lawful execution of duties by a police officer and its relationship with offences such as intimidating, obstructing, and resisting a police officer:

*The assaults which Williams is thus alleged to have committed consisted of pushing both constables aside so that he could get to the car, and perhaps of pushing Constable Borrowes away as he sought to arrest him. Bluegum's offences both seem to stem from the one struggle with Constable Borrowes and I am not at all sure that they do not suffer from duplicity. However Mr Maze did not raise that point, and because of the view I take of other aspects of the matter I do not need to decide it.*

*It is quite clear that the cause of the trouble was Williams' determination to drive away, and the constables' determination that both appellants should stay where they were until the complainant arrived. The constables' actions were acknowledged to be for the purpose of preventing Williams from getting into the car. Their actions were quite passive, in the sense that they did no more than move into Williams' path to block his entry to the car, but Constable Borrowes, who appears to have taken the initiatives in what was done, said that had Williams tried to move around him, he would have moved to block his way again. He agreed that he had at the time no good cause to arrest either appellant for the offence which was being investigated, and that he had no right to keep the appellants there. He also said "if they had walked around me and hopped into the car, I wouldn't have bodily stopped them from leaving". But clearly he was determined to stop them walking around him and hopping in the car, if only in the passive way mentioned; and on Constable Robinson's evidence, he made that clear not only by his actions but also in words.*

*Mr Maze submitted that the constables had no right to prevent the appellants from getting into the car and driving away; that by standing in the appellants' way as they did the constables were acting outside the bounds of their duty; that Williams was entitled to push them out of the way; that in so doing he committed no offence for which he could lawfully be arrested; and that Bluegum was thus entitled to come to his rescue.*

*The need of the community to have an efficient and effective police force must of course be balanced against the necessity of ensuring that the citizen's freedom is restricted only when and to the extent that the law permits. The proper preservation of the balance is a very difficult thing in situations of stress or strife. Most citizens will readily co-operate with the police. Where, for whatever reason, one refuses to do so, he can provoke a situation for which he has only himself to blame. On the other hand, the police may in the heat of the moment exceed their proper authority, and must then be, and I am sure are, prepared to have their actions held up to the critical scrutiny of the Court. The calm and dispassionate atmosphere in which that is done is far removed from the circumstances in which the events would have taken place, and therefore any adverse finding in law which the Court makes is not necessarily to be regarded as a criticism of the actions taken by the police at the time. That is certainly the case here.*

*In R v Waterfield [1964] 1 QB 164; [1963] 3 All ER 659, a police officer wished to examine a car which had been involved in a collision. Pending his arrival, two constables were keeping it under observation where it was parked. The appellants came to drive it away. The constables said their sergeant wished to examine it, and it had to remain where it was. The appellants insisted they were going to remove it. The constables stood, one at each end of the car, to prevent its removal. The car was driven backwards, slightly striking one of them and then forwards, forcing the other to jump aside. It was held by the Court of Criminal Appeal that the police had no right to prevent the removal of the car. The general principles governing police powers were discussed in this way in the judgment of the Court delivered by Ashworth J:*

*"In the judgment of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed. In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person's liberty or property. If so, it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognised at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.*

*"Thus, while it is no doubt right to say in general terms that police constables have a duty to prevent crime and a duty, when crime is committed, to bring the offender to justice, it is also clear from the decided cases that when the execution of these general duties involves interference with the person or property of a private person, the powers of constables are not unlimited" (ibid, 170-171; 661).*

*Respectfully adopting that approach, in my opinion the police officers here, in preventing Williams getting into the car, were prima facie interfering*

unlawfully with his liberty. Were they then acting within the general scope of a duty? The learned District Court Judge pointed out that the constables were in possession of information about a crime alleged to have been committed, which they were instructed to investigate and were under a duty to investigate. In stopping the vehicle, and checking its occupants they were acting pursuant to that duty. That is true. But they went further than that. They endeavoured to detain the vehicle and its occupants. In my opinion, that was beyond the general scope of their duty. If I am wrong as to that, and it was within the general scope of their duty, I am equally of opinion that their actions were an unjustifiable use of the powers associated with that duty. They had no power to detain the vehicle, as *Waterfield's* case shows. Did they have power to detain its occupants? Clearly not. It is a fundamental principle that no man may be detained by the police unless he be arrested (eg *Blundell v Attorney-General* [1968] NZLR 341, 354.) This is so, whether or not the constables' inquiries were completed. In this regard, I respectfully differ from the learned Judge in the Court below. I think that what happened here is comparable with the circumstances described by Winn LJ in *Kenlin v Gardiner* [1966] 3 All ER 931, 934; [1967] 2 QB 510, 519:

*"What was done was not done as an integral step in the process of arresting, but was done in order to secure an opportunity, by detaining the appellants from escape, to put to them or to either of them the question which was regarded as the test question to satisfy the respondents whether or not it would be right in the circumstances, and having regard to the answer obtained from that question, if any, to arrest them."*

The Court there held that the police had no power to detain a person for such a purpose, and that in taking hold of the appellants in order to detain them, the policemen committed technical assaults which the appellants were entitled to counter with such force as was necessary to secure their escape.

However, there is another aspect to the matter, illustrated by *Donnelly v Jackman* [1970] 1 All ER 987; [1970] WLR 562. There, a constable had walked up behind the appellant and twice tapped him on the shoulder with a view to speaking to him about an offence which he had cause to believe the appellant may have committed. After he had been touched for the second time, the appellant turned and punched the constable. In support of his appeal against his conviction for assaulting the constable in the execution of his duty, the appellant argued that the constable had no right to stop him other than by arrest. The Court upheld the conviction. Talbot J said:

*". . . it is not every trivial interference with a citizen's liberty that amounts to a course of conduct sufficient to take the officer out of the course of his duties" (ibid, 989; 565).*

(cf also *Squires v Botwright* [1972] RTR 462.) Earlier in his judgment, Talbot J had cited these words of Lord Parker CJ in *Rice v Connolly* [1966] 2 All ER 649, 651; [1966] 2 QB 414, 419:

*"It is also in my judgment clear that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace, for preventing crime or for protecting property from criminal injury."*

*Mr McGuire invoked this general proposition in support of his case here. However, to approach this matter on the basis of a general proposition of that kind may lead to error, as Ashworth J recognised in the passage I have quoted from his judgment in R v Waterfield and as Rice v Connolly itself demonstrates. For in the latter case, Lord Parker CJ went on to say this:*

*". . . the sole question here is whether the appellant had a lawful excuse for refusing to answer the questions put to him. In my judgment he had. It seems to me quite clear that though every citizen has a moral duty or, if you like, a social duty to assist the police, there is no legal duty to that effect, and indeed the whole basis of the common law is that right of the individual to refuse to answer questions put to him by persons in authority, and a refusal to accompany those in authority to any particular place, short, of course, of arrest" (ibid, 652; 419).*

88. The Supreme Court of Nauru applied these principles in **Republic v Agege** [2021] NRSC 29; Criminal Case 20 of 2020 (3 August 2021), and as such, they are part of Nauru's jurisprudence too.

## **ANALYSIS**

### **Count 1**

89. Section 77A of the Act provides as follows:

#### ***Intimidating or threatening a police officer***

*A person commits an offence, if the person intimidates or threatens a police officer in the execution of the police officer's duties.*

*Penalty: a maximum term of 5 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.*

90. Section 77A of the Act creates two offences. One is for intimidating a police officer in the execution of the police officer's duties, and the other is for threatening. For count one, the defendant is charged with intimidating a police officer in the execution of the police officer's duties.
91. Section 8 of the Act defines the term '**intimidation**' or '**intimidates**' as "*the use of violence or threats to compel a person to do or abstain from doing any act which he or she has a legal right to do or abstain from doing*".

92. The New South Wales Supreme Court in *Director of Public Prosecutions (NSW) v Best [2016] NSWSC 261 (16 March 2016)* identified the following elements of the offence of intimidating a police officer in the execution of his/her duties after discussing various cases involving a charge for police intimidation, which are applicable in the current matter:
- (a) *a particular form of conduct, whether words or actions or both;*
  - (b) *conduct that is capable of inspiring fear or is capable of coercing another to do or defer from some action;*
  - (c) *conduct directed at a law enforcement officer while in the execution of the officer's duty;*
  - (d) *actual intimidation of such an officer.*
93. Section 12 of the Act provides the following with regard to elements of an offence:
- Elements of an offence***
- (1) *An offence consists of physical elements and fault elements.*
  - (2) *Notwithstanding subsection (1), the written law that creates the offence may provide:*
    - (a) *different fault elements for different physical elements; or*
    - (b) *that there is no fault element for one or more physical elements.*
94. Section 22(1) & (2) of the Act provides as follows:
- Offences that do not provide fault elements***
- (1) *Where the written law creating an offence does not provide a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element.*
  - (2) *Where the written law creating an offence does not provide a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for the physical element...*
95. Section 13 of the Act provides as follows:
- Establishing criminal responsibility for offences***
- A person shall not be found guilty of an offence unless the prosecution proves:*
- (a) *each physical element of the offence that is specified in the written law creating the offence that is relevant to establishing guilt; and*
  - (b) *for each physical element for which a fault element is required, the fault element or one of the fault elements for the physical element.*
96. Further, section 14 of the Act provides as follows:
- Physical elements***

- (1) A 'physical element' of an offence may be:
- (a) conduct;
  - (b) a result of conduct; or
  - (c) a circumstance in which conduct, or a result of conduct, occurs.

97. In light of the above, I find that for an offence of intimidating a police officer in the execution of his or her duty, the prosecution needs to prove beyond a reasonable doubt that:
- i. The defendant;
  - ii. Intentionally engaged in a particular form of conduct and/or words;
  - iii. The defendant's conduct and/or words used by him were capable of coercing the police officer to do or abstain from some action, and the defendant was reckless of the fact that this conduct and/or words used by him would cause the same;
  - iv. That the police officers were acting lawfully in the execution of their duties, and the defendant knew or ought to have known that the police officers were in the execution of their duties as police officers; and
  - v. The conduct and/or words used by the defendant actually intimidated the police officer, and the defendant was reckless of the fact that this conduct and/or words used by him would cause the same. In light of section 8 of the Act as outlined above, it is essential that, to prove that the police officer was intimidated, the prosecution needs to adduce evidence to establish that, as a result of the use of violence or threats the police officer was compelled to do or abstain from doing something that was within his or her right to do or not to do.

### **Count 2**

98. Section 242 of the Act provides as follows:

***242 Obstructing public official***

*A person commits an offence, if:*

*(a) the person obstructs, hinders, intimidates or resists another person in the exercise of the other person's functions as a public official; and*

*(b) the person believes the other person is a public official.*

*Penalty: 2 years imprisonment.*

99. Western Australia has a similar provision to section 242 of the Act for obstructing public officials. The District Court of Western Australia in ***CUNNINGHAM -v- TRAYNOR*** [2016] WADC 168 (9 December 2016) at [103] of its judgment made the following observations about the importance of the context in which the public official is exercising his or her functions:

*103 Whether a public officer was acting in the performance of his or her functions needs to be determined having regard to the nature of the public office held and the particular function or functions which the officer was attempting to perform at the time in question: Hayward-Jackson v Walshaw [2012] WASC 107 [22] (EM Heenan J).*

100. In this instance, the public official is a police officer. Therefore, cases that deal specifically with offences of obstructing a police officer in the execution of their duties are more applicable to this count.

101. To determine the elements of the offence for obstructing a police officer in execution of his or her duties, I rely on the following observations in **Green v Moore** [1982] 1 All ER 428 at 432 & 433:

*In our view the law requires a court which is considering a charge of willfully obstructing a police officer in the execution of his duty to ask itself the three questions propounded by Lord Parker CJ in Rice v Connolly [1966] 2 All ER 649 at 651, [1966] 2 QB 414 at 419:*

i. *Was there any obstruction to a constable?*

...

ii. *Was the constable acting lawfully in the execution of his duty?*

...

iii. *Was the obstruction intended to obstruct the constables in the execution of their duty?...*

102. In light of the above, I find that for an offence of obstructing a police officer in the execution of his duty, the prosecution needs to prove beyond a reasonable doubt that:

i. The public official was a police officer, and he was obstructed.

ii. The police officer was acting lawfully in the exercise of his or her duties.

iii. The defendant intended to obstruct the police officer in the execution of his or her duty.

***Were the police officers in this matter acting lawfully?***

103. As discussed in **Williams v Police**, supra, a person cannot be detained without first being arrested.

104. In this instance, I have highlighted the need for police officers to act diligently when trying to determine if the defendant was actually the same person who passed them. There is no evidence that the defendant was trying to escape or would try to evade the police officers. It is unclear which point in time and where PW4 requested the

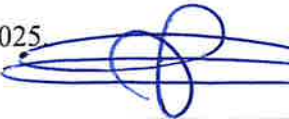
defendant to pull over, and how this instruction was conveyed; nevertheless, the defendant did voluntarily stop. However, the manner in which the officers approached the defendant was unreasonable and aggressive in nature. This is an instance of excessive use of authority. PW4 parked the police vehicle so close to the defendant that he was able to reach out and pull the keys of the motorbike from the ignition key switch. Further, PW4 in fact detained the defendant by parking the police vehicle in the manner he did and by removing the motorbike's keys, especially when the other officers moved in to restrain the defendant. Given the circumstances of the current case, the only reasonable inference to be drawn about the length of time within which this transpired is that the entire incident at the "T-Shop" happened very quickly.


105. PW4 did not provide any reasons to the defendant for what he was doing. Even PW4 confirmed in his cross-examination that the defendant was using obscene language, and challenged the officers, asking them why they stopped him or arrested him. This is an instance of unlawful detention. Further, all that transpired afterwards was a result of this unlawful detention. In light of the foregoing, I find that the police officers were not acting lawfully in the execution of their duties for count one and for count two. Therefore, an essential element for the offences in count one and in count two has not been established by the prosecution, that is, the police officers were acting lawfully in the execution of their duties. Further, in relation to count one, all the officers also gave evidence that the defendant's conduct did not dissuade them from arresting the defendant. This would mean that there was no actual intimidation in relation to count one as well.

## VERDICT

106. For the foregoing reasons, I find that the defendant is:
- i. Not guilty for count one of the charges laid against him, and I acquit him of it accordingly.
  - ii. Not guilty for count two of the charges laid against him, and I acquit him of it accordingly.

Dated this 3<sup>rd</sup> day of September 2025

  
Resident Magistrate  
Vinay Sharma

The seal of the District Court of Nauru is circular, featuring a central emblem with a map of Nauru and the text "DISTRICT COURT OF NAURU" around the perimeter. There are two stars on either side of the emblem.