IN THE DISTRICT COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No. 49 of 2020

BETWEEN: **THE REPUBLIC OF NAURU**

PROSECUTION

AND: **KAUWEN ALIKLIK**

1st DEFENDANT

AND: **MAHLONE ENGAR**

2nd DEFENDANT

BEFORE: Resident Magistrate Mr. Vinay Sharma

DATE OF HEARING: 29 October 2025

DATE OF RULING: 14 November 2025

APPEARANCE:

PROSECUTION: M Suifa'asia

1st DEFENDANT: R Tom

2nd DEFENDANT: R Tagivakatini

RULING

[Application for No Case to Answer]

INTRODUCTION

1. Kauwen Aliklik and Mahlone Engar are charged as follows:

FIRST COUNT

Statement of Offence

CAUSING HARM TO POLICE OFFICER: *Contrary to section 77(a)(b)(c)(d) and (i) of the Crimes Act 2016*

Particulars of Offence

***KAUWEN ALIKLIK** and **OTHERS** on the 8th day of September, 2020 at Denig District in Nauru, intentionally engaged in conduct by punching and biting the thumb of **TAEKAUWEA TAUMEA** and the said conduct caused harm to **TAEKAUWEA TAUMEA** without his consent and **KAUWEN ALIKLIK** and **OTHERS** intended to cause harm to **TAEKAUWEA TAUMEA** because they believed that he is a police officer and he is in fact a police officer.*

ALTERNATIVE COUNT TO FIRST COUNT

Statement of offence

COMMON ASSAULT: *contrary to section 78(1(a)(i) and (b)(ii) of the Crimes Act 2016*

Particulars of offence

***KAUWEN ALIKLIK** and **OTHERS** on the 8th day of September, 2020 at Denig District in Nauru, intentionally engaged in conduct by punching and biting the thumb of **TAEKAUWEA TAUMEA** that resulted in the direct application of force on **TAEKAUWEA TAUMEA** and **TAEKAUWEA TAUMEA** did not consent to the said conduct.*

SECOND COUNT

Statement of offence

AIDING AND ABETTING: *contrary to section 29(1)(a)(b)(c)(i) of the Crimes Act of 2016, as read with section 77(a)(b)(c)(d) and (i) of the Crimes Act 2016*

Particulars of offence

***MAHLONE ENGAR and OTHERS** on the 8th day of September, 2020 at Denig District in Nauru, aided and abetted the commission of an offence by **KAUWEN ALIKLIK** and **KAUWEN ALIKLIK** committed the offence by causing harm to a police officer and **MAHLONE ENGAR and OTHERS** intended the conduct of encouraging **KAUWEN ALIKLIK** to aid and abet the commission of the offence that was committed.*

ALTERNATIVE COUNT TO SECOND COUNT

***AIDING AND ABETTING:** contrary to section 29(1)(a)(b)(c)(i) of the Crimes Act of 2016 as read with section 78(1)(a)(i) and (b)(ii) of the Crimes Act 2016*

Particulars of offence

***MAHLONE ENGAR and OTHERS** on the 8th day of September, 2020 at Denig District in Nauru, aided and abetted the commission of an offence by **KAUWEN ALIKLIK** and **KAUWEN ALIKLIK** committed the offence of common assault and **MAHLONE ENGAR and OTHERS** intended the conduct of encouraging **KAUWEN ALIKLIK** to aid and abet the commission of the offence that was committed.*

2. The prosecution opened its case on September 23, 2025, and closed it on September 24, 2025. Thereafter, the defendants' counsels made a no-case-to-answer application and sought time to file their written submissions.

3. The second defendant's counsel filed his written submissions on 29 September 2025, and counsel for the prosecution filed her written submissions on 20 October 2025. I heard the parties on 29 October 2025.

4. Two witnesses gave evidence for the prosecution, namely, Taekauwea Taumea ("PW1") and Dwain Grundler ("PW2"). I have considered all the evidence before me. I am not required to provide a complete account of the evidence before me.

5. The prosecution concedes that there is no case to answer for the charge of causing harm to a police officer against the first defendant because the victim/complainant was off duty at the time of the offence. However, she submitted that there is sufficient evidence to proceed with the alternative count of common assault against him. Furthermore, the prosecution argues that the second defendant's failure to stop the fight between the first defendant and the victim/complainant supports the charge of aiding and abetting against the second defendant.

6. The first defendant's counsel submits that there is no case to answer against his client because the victim was off duty at the time of the offence. Further, submissions were

also made that there was no evidence to establish a charge of aiding and abetting against the second defendant.

7. I am to determine whether there is sufficient evidence to put the defendants on their defence.

8. The following are my reasons for my decision.

WHAT ARE THE APPLICABLE LEGAL PRINCIPLES IN RELATION TO AN APPLICATION FOR NO CASE TO ANSWER?

9. Justice Crulci in ***Republic v Jeremiah*** [2016] NRSC 42; Criminal Appeal Case 119 of 2015 (17 March 2016) set out the following guideline for the applicable test for a "No Case to Answer" application involving direct evidence in Nauru at [20], [21] and [22] of her ruling:

> *20. In Nauru, section 201(a) Criminal Procedure Act 1972 has the requirement of 'sufficiency', rather than that of 'no evidence'. In considering 'sufficiency', some assistance may be found in a Practice Note[20] dated 9 February 1962, Queen's Bench Division. Here Lord Parker, CJ issued guidelines in relation to justices faced with submissions of no case to answer :*
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> > *'A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*
> >
> > *Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.'*
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> *21. The law requires that two different tests to be applied by the Court when ruling on an application of no case to answer submission, and that of final determination guilt at the end of the trial. At the conclusion of a trial the court has the benefit of addresses by counsel or pleaders on the issues of witness*

credibility and sufficiency of evidence, issues which are not germane to the consideration of a no case submission. These different tests are applicable whether the matter is tried by judge alone, or whether with assessors/ a jury.

22. Taking the above matters into consideration, the following are guidelines when a submission of no case to answer is to be made at the end of the prosecution case:

(1) If there is no evidence to prove an element of the offence alleged to have been committed, the defendant has no case to answer .

(2) If the evidence before the court the evidence has been so manifestly discredited through cross-examination that no reasonable tribunal could convict upon it, the defendant has no case to answer .

(3) If the evidence before the court could be viewed as inherently weak, vague or inconsistent depending on an assessment of the witness's reliability, the matter should proceed to the next stage of the trial and the submission of no case to answer be dismissed.

10. At this stage, the prosecution is only required to have provided sufficient evidence to establish the elements of the offence, that is, the prosecution is only required to establish a prima facie case against the Applicant. Needless to say, the test at this stage is not whether the prosecution has proven all the elements of the offence beyond a reasonable doubt.

11. Upon the conclusion of the prosecution's case, if there are issues as to what weight is to be given to the evidence, which would require an assessment of the credibility and reliability of the evidence, then the matter must proceed to the next stage. The court does not conduct evaluations of the credibility and reliability of evidence at this stage of the proceedings.

WHETHER THERE IS SUFFICIENT TO PUT THE DEFENDANTS ON THERE DEFENCE?

First defendant

12. The first defendant is charged with one count of causing harm to a police officer. In the alternative, he is charged with one count of common assault.

13. At the time of the offence, section 77 of the ***Crimes Act 2016*** provided as follows:

77 ***Causing harm to police officer***
A person commits an offence if:
(a) the person intentionally engages in conduct; and

(b) the conduct causes harm to another person without the person's consent; and
(c) ***the person intends to cause harm to the other person because the person believes the other person is a police officer****; and*
(d) the other person is in fact a police officer.

14. The elements of the offence for causing harm to a police officer in this matter are:
    i. That the first defendant intentionally engaged in conduct;
    ii. That the conduct caused harm to the victim/complainant;
    iii. That the victim/complainant did not consent to the conduct that caused him harm;
    iv. ***That the defendant intended to cause harm to the victim/complainant because he believed that the victim/complainant at the material time was a police officer***; and
    v. That the victim/complainant at the material time was in fact a police officer.

15. Section 77 of the ***Crimes Act 2016*** is akin to crimes which are motivated by prejudice against a person's religion, ethnicity, race, sexual orientation, disability, or other protected characteristics, which is often classified as a hate crime. These types of crime involve an element of bias. This is evident from the wording of section 77(c) of the ***Crimes Act 2016***. For instance, an assault on a person because of his or her sexual orientation consists of an element of bias against a person based on their sexual orientation.

16. It is also important to note that in most, if not all, common law jurisdictions, in relation to a similar type of offending, there is a requirement that the harm to the police officer was caused whilst the police officer was in the lawful execution of his or her duty as a police officer. Section 77 of the ***Crimes Act 2016*** does not require that the police officer was in the lawful execution of his or her duty as a police officer when the harm was caused to him. Section 77(c) of the ***Crimes Act 2016*** only requires that the reason for causing harm to a person was purely on the basis that he or she was a police officer.

17. PW1 gave evidence that on 8 September 2020, he was at Location, Denig District. In the evening of that day, he was returning from the sea with PW2. He was off duty at the time. The first defendant challenged PW1 to a fight in front of his residence. The second defendant was with him at the time. After a brief verbal exchange, a fight ensued. When asked why the first defendant challenged him to a fight, he gave evidence that, three days before 8 September 2020, he was on duty and attending to a report at Location regarding drunkards. He told the other officers attending the report that he would arrest the suspect because one of them was afraid to accompany him inside. Thereafter, he entered the house where the youths were drinking alcohol. He was to arrest "Buddy". When he was speaking to "Buddy", "Buddy" kicked him in his face. This made him angry. So, he dragged "Buddy" out of the house. The first

defendant requested that PW1 not arrest "Buddy" while PW1 was dragging "Buddy" out of the house. PW1 then held the first defendant and threatened him that he was not supposed to talk to him and give him directions, and that he "will break his ass". During cross-examination, he angrily said in Nauruan that the reason why he threatened the first defendant was that *"Kauwen was fucking around with me"*. He said this angrily.

18. PW1 seems to get frustrated very fast. This is evident from the manner in which he gave evidence during his re-examination. Furthermore, he gave evidence that the reason the first defendant challenged him to a fight was due to what he had done to the first defendant when arresting "Buddy".

19. I agree with the submissions of the counsels that there is no case to answer for the charge of causing harm to a police officer because there is no evidence that the defendant intended to cause harm to PW1, because he believed that he was a police officer. He intended to cause harm to PW1 because of what PW1 did to him. Furthermore, I am unable to draw an inference from the evidence before me that the defendant intended to cause harm to PW1 because PW1 was a police officer.

20. In light of the above, I find that there is no case to answer for the first count of causing harm to a police officer against the first defendant. However, having considered all the evidence before me, I find there is sufficient evidence establishing a prima facie case of common assault against the first defendant.

Second defendant

21. The second defendant is charged with one count of aiding and abetting the first defendant in the commission of the offence of causing harm to a police officer. Alternatively, he is charged with one count of aiding and abetting the first defendant in committing the offence of common assault.

22. In light of my finding above that there is no case to answer against the first defendant for causing harm to a police officer, and a finding that there is a prima facie case of common assault against him.

23. At the time of the offence, Section 29 of the ***Crimes Act 2016*** provided as follows:

> ***29 Aiding, abetting, counselling and procuring***
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> *(1) A person commits an offence if:*
>
> > *(a) the person's conduct in fact aids, abets, counsels or procures the commission of an offence by another person (the 'other offender'); and*
> > *(b) the other offender in fact commits the offence; and*
> > *(c) the person:*

(i) intends the conduct to aid, abet, counsel or procure the commission of an offence of the type the other offender commits; or
(ii) intends the conduct to aid, abet, counsel or procure the commission of an offence and the person is reckless about the commission of the particular offence that the other offender in fact commits.

(2) The offence is punishable as if the person had committed the offence mentioned in subsection (1)(b).

(3) However, a person is not guilty of the offence if, before the offence is committed, the person:

(a) terminates the person's involvement; and
(b) takes all reasonable steps to prevent the commission of the offence.

(4) This section applies regardless of whether the other offender or another person is prosecuted or found criminally responsible for the offence that the person aids, abets, counsels or procures.

24. The counsel for the prosecution submits that the mere presence of the second defendant and his not stopping the fight is sufficient to establish the charge of aiding and abetting the first defendant for the offence of common assault.

25. Justice Rajasinghe in the High Court of Fiji in ***Bolabiu v State*** [2024] FJHC 546; HAA40.2023 (30 August 2024) at [48] of his judgment cited the Fiji Court of Appeal decision in ***Araibulu v State*** [2017] FJCA 120; AAU0102.2013 (14 September 2017) with regard to aiding and abetting an offence:

> *Premethilaka JA in Araibulu v State [2017] FJCA 120; AAU0102.2013 (14 September 2017) observed that mere voluntary presence does not itself constitute aiding or abetting. Premethilaka JA said that;*
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> > *"[27] Mere continued voluntary presence at the scene of a crime, even though it was not accidental, does not of itself necessarily amount to encouragement;* ***but the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition, though he might reasonably be expected to prevent and had the power to do so, or at least express his dissent, might in some circumstances afford cogent evidence upon which a jury would be justified in finding that he willfully encouraged and so aided and abetted, but it would be purely a question of fact for the jury whether he did so or not*** *(vide Archbold Criminal Pleading, Evidence & Practice 39th Edition page 1707)." (my emphasis)*

26. In light of the above observations in ***Bolabiu v State***, supra, I find that in the current circumstances, the prosecution has established a prima facie case against the second defendant for the charge of aiding and abetting the first defendant in the commission of the offence of common assault.

ORDERS

27. The first defendant is acquitted of count 1 of the charge for causing harm to a police officer. Further, the first defendant is put to his defence for the alternative count of common assault.

28. The second defendant is acquitted of count 2 of the charge for aiding and abetting the first defendant in the commission of the offence of causing harm to a police officer. Further, the second defendant is put to his defence for the alternative count of aiding and abetting the first defendant in the commission of the offence of common assault.

Dated this 14th day of November 2025.

DISTRICT COURT OF NAURU

Resident Magistrate
Vinay Sharma