



**IN THE DISTRICT COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION**

Criminal Case No. 79 of 2022

BETWEEN: REPUBLIC OF NAURU

PROSECUTION

AND: VALERINA DENITAGE

1st DEFENDANT

AND: KIALANIAH-MARI REIYETSI

2nd DEFENDANT

BEFORE: Resident Magistrate Mr Vinay Sharma

**DATE OF TRIAL: 20, 21, 22, 23 January, 7 and 28 March, 23 April 2025, and 25
August 2025**

DATE OF JUDGMENT: 10 October 2025

APPEARANCE:
PROSECUTION: W Deiye
1st DEFENDANT: V Clodumar
2nd DEFENDANT: M Solomon

JUDGMENT

INTRODUCTION

1. The defendants are charged as follows:

COUNT 1

Statement of offence

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

Particulars of Offence

VALERINA DENITAGE on the 6th day of November, 2022 at Yaren District in Nauru, resisted a police officer namely **SENIOR CONSTABLE PANCIA DEPOUDU** in the exercise of her function as a public official.

COUNT 2

Statement of offence

DANGEROUS DRIVING: *Contrary to Section 67(1)(a)(b)(c)(d) and (ii) of the Motor Traffic Act 2014.*

Particulars of Offence

VALERINA DENITAGE on the 6th day of November, 2022 at Meneng District in Nauru, drove a motor cycle Honda Blade red, black and white in colour upon a public highway recklessly in a manner dangerous to the public.

COUNT 3

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 67(1)(a)(b)(c)(d) and (ii) of the Motor Traffic Act 2014.*

Particulars of Offence

KIALANAH REIYETSI on the 6th day of November, 2022 at Meneng District in Nauru, aided and abetted the commission of an offence by ***VALERINA DENITAGE*** and ***VALERINA DENITAGE*** committed the offence of dangerous driving and ***KIALANAH REIYETSI*** intended the conduct to aid and abet the commission of the offence that ***VALERINA DENITAGE*** committed.

2. The 1st defendant pleaded not guilty to counts 1 and 2 of the charge laid against her. However, the 2nd defendant pleaded guilty to count 3 of the charge.
3. The prosecution opened its case on 20 January 2025.
4. On 23 January 2025, the prosecution closed its case. Thereafter, the 1st defendant's counsel made an application for "no case to answer". The 1st defendant's counsel filed his written submissions in support of the "no case to answer" on 25 October 2024. The prosecution filed its written submissions in response on 11 November 2024. The parties were heard on their submissions on 28 March 2025. I delivered my written ruling on the application for "no case to answer" on 9 May 2025, dismissing it.
5. On 23 April 2025, the 1st defendant was put on her defence. Directions were given to her in relation to her right to remain silent, give evidence under oath or make an unsworn statement in court. She chose to give evidence under oath.
6. The 1st defendant's counsel also informed the court that he would call the 2nd defendant to provide evidence on behalf of the 1st defendant. The counsel for the prosecution objected. Having heard the parties on the matter, I decided that the 2nd defendant is able to give evidence voluntarily. However, the 2nd defendant is not a compellable witness.
7. The 1st defendant gave evidence in her defence, and the 2nd defendant gave evidence on her behalf. Thereafter, the 1st defendant closed her case.
8. The parties sought time to file written closing submissions. The defendant's counsel filed his closing submissions on 18 July 2025, and the counsel for the prosecution filed her closing submissions on 25 August 2025. I heard the parties' closing submissions on 25 August 2025.

9. I am to determine the following issues:
 - i. Whether the prosecution has proven beyond a reasonable doubt that the 1st defendant obstructed Senior Constable Pancia Depoudu?
 - ii. Whether the prosecution has proven beyond a reasonable doubt that the 1st defendant was driving dangerously contrary to section 67(1)(a)(b)(c)(d) and (ii) of the *Motor Traffic Act 2014*?
10. The following are my reasons for this judgment.

PRINCIPLES RELEVANT TO THE DECISION-MAKING

11. I will outline my role before I proceed to consider the evidence of the witnesses.
12. 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 onus to prove 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.
13. 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.
14. 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 established before they are considered proven.
15. I have considered all the evidence placed before me. I must determine whether each witness is honest, reliable, and credible. By doing so, I can rely on the evidence provided and make a finding that the facts 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.
16. 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 recall a memory 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?*¹

17. 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 in observing and recalling their memories.
18. 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 am to carefully consider the evidence logically and rationally, bringing an open and unbiased mind, 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.
19. 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.
20. 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 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.

¹ *R v Killman* [2024] BCPC 104

21. 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.
22. 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

23. The counsel for the prosecution called 5 witnesses, namely, Constable Anthony Larrystynes Dabwadaw ("PW1"), Sergeant Bevan Dediya ("PW2"), Sergeant Pancia Depoudu ("PW3"), Constable Robato Deideneng ("PW4"), and Senior Constable My-Girl Cecil ("PW5").
24. I have considered all the evidence given by the prosecution witnesses. A summary of the prosecution witnesses' evidence is as follows.

Evidence of PW1

25. PW1 gave evidence that on 6 November 2022, he was on duty. He was with Sergeant Pancia Depoudu ("PW3") and Constable Robato Deideneng ("PW4"), conducting a random patrol in a police vehicle. PW3 was driving the police vehicle. Early in the morning on the specified day, when it was still dark, he remembered encountering the defendants in Meneng District. He could not recall the exact time. He stated that the defendants were on a motorbike, and the 1st defendant was driving as if she were drunk, swerving from side to side. However, he stated that they were driving at a normal speed.
26. PW1 stated that at this point, they switched on the beacon on their Police Vehicle. The 1st defendant then sped off. They trailed them. He said that there was "*quite a traffic going on*" at the time. They went after them, and when they were about to reach the "Abled and Disabled House", they put on the siren and headlights to indicate to police officers conducting a road blitz at "Abled and Disabled House" to stop the defendants. The police officers at the road blitz tried to stop the defendants. However, the defendants went past the road blitz without stopping. He stated that the 1st defendant "sped up" while driving. They kept trailing after the defendants.
27. PW1 stated that at this point, there were public users on the road (without giving specifics). They were overtaking vehicles and trying to get away from them. At the same time, the defendants were increasing their speed. They trailed the two to "Tawaki Kam's residence" in Boe District. They went through the airport road. When the

defendants reached “Tawaki Kam’s residence”, they went into a path through which larger vehicles cannot pass. The defendants came out from the other end of the path and then drove back to Yaren District. This time they went around the airport, travelling on the road that leads to the government buildings.

28. PW1 stated that they followed the two while travelling through the airport road because they could see them. They turned right at the junction near the basketball court in Yaren District and stopped their police vehicle in the middle of the road to apprehend the defendants. The 1st defendant drove the motorbike around them, turned left at the junction, and headed towards Boe District again. The defendants turned around somewhere near the “Multicultural Centre” and then travelled towards Yaren District. The police followed the defendants. The defendants then stopped opposite the “Bi-rite Store”.
29. PW1 stated that he got out of the police vehicle, and they arrested the defendants. He cannot remember who arrested them. When he got out of the police vehicle, he had a “stick” in his hand, which was approximately 2 feet long. He said that at the time he approached the defendants, he “*felt stressed and frustrated*”. In Nauruan, he said that he was angry. He said he felt that way because of the duration of their pursuit of the defendants, and that they could have caused harm to the public. When he reached them, he asked them, “*You wanna kill people from this?*” He said this while approaching them. He stated that his “tone was very rough”. Initially, he stated that he hit the front of the motorbike with the stick, causing the defendants to fall off. When asked to clarify, he said he could not recall if they fell before or after he hit the motorbike.
30. PW1 stated that at this time, the defendants were in shock at what he had just done. He and the other police officer then conducted traffic because the PW2 approached the defendants. He couldn’t see the defendants and PW2 clearly when conducting traffic. The defendants were taken into the police van’s can-cage. He then got on the police vehicle, and they went to the Central Police Station (“CPS”).
31. During cross-examination, PW1 confirmed that the time they came across the defendants was around 2 am. He also stated that there were a number of cars on the road at the time. He also confirmed that it was busy because there were oncoming vehicles. He couldn’t remember the exact number of cars. He was the front passenger in the police vehicle.
32. Counsel for the 1st defendant put it to PW1 that the police vehicle had come close to the motorbike and that PW1 yelled angrily to them to stop. The defendants then pulled over, and PW1 got out to approach them. However, the defendants left before he could reach them. PW1 did not agree to this. It was also put to PW1 that when the defendants went past “Multicultural Centre”, the police vehicle was driven next to it, and PW1 pulled the stick and threatened to hit the defendants. PW1 did not agree to this either.

33. PW1 also confirmed that he never threatened to hit the defendants. It was put to him that he pushed the defendants off the bike at the “Bi-rite Store” when he came up to them from the police vehicle. He also denied this.

Evidence of PW2

34. PW2 gave evidence that on 6 November 2022, he was conducting a traffic blitz at the “Able Disabled House” at Meneng District. He stated that on that night, he saw his colleagues in a police vehicle pursuing a motorbike. He said that he used his traffic wand to signal the motorbike to stop. He also noted that the motorbike was speeding when it approached the traffic.
35. PW2 stated that he could not recognise the two on the motorbike, nor could he confirm if they were male or female, because they were speeding. He also said that the police vehicle was speeding to stop the motorbike.

Evidence of PW3

36. PW3’s evidence up until when PW3 escorted the defendants into the police van cage is consistent with PW1’s evidence.
37. I will provide a summary of the additional evidence given by PW3.
38. PW3 provided evidence that during the initial part of the encounter with the defendants, she accelerated the police vehicle to get closer to them, and that PW1 “*indicated*” to the defendants to stop. Then the motorbike turned back and started slowing down. PW3 tried pulling up next to the motorbike. PW1 called out to the defendants to stop. Then she heard the 2nd defendant tell the 1st Defendant to speed up. She knows the 2nd defendant because they work together. The 2nd defendant works at “HR”. Furthermore, she was not acquainted with the 1st defendant, and she had only heard of her name due to previous reports against her. She identified the two in court.
39. PW3 gave evidence that the 1st defendant overtook some vehicles, and that there were some other oncoming vehicles on the road. She stated that she kept a safe distance from the defendants while pursuing them to ensure their safety. She also said that when the defendants stopped opposite the “Bi-Rite Store”, PW1 and PW4 approached the defendants first. She parked the police vehicle and then came. When she reached them, the 1st defendant was sitting on the ground and shouting at the officers. She told the 1st defendant to calm down because “*she was the one who created the problem*”. She also said that the 1st defendant told her that she was terrified, but PW3 told her not to be scared because “she brought the problem”. The defendants were crying. PW3 asked the 1st defendant why she did that, and she replied that she was terrified or scared because she was talking to her. PW3 could smell liquor on the defendants

40. PW3 gave evidence that at this point she invited the defendants to accompany her to the police station. They were telling her how terrified and scared they were. PW3 kept telling them not to be scared because they “did this”. PW3 then escorted the defendants to the police van can cage. At the CPS, PW3 escorted the defendants to the “Watch-House”. PW3 searched the defendants in the “Watch-house”. She found some property on the defendants, but cannot remember what she found on them. PW3 then took them to the detention area. Later, the 2nd defendant’s mother came to the CPS and asked for the 2nd defendant. The 2nd defendant had called her up so that she could pick her up from the CPS.
41. PW3 gave evidence that she went back to search the defendants for the phone. She said that when she arrived at the cell area, she was standing outside and asked the defendants about the phone. She stated that the defendants told her they didn’t have the phone and that they became angry, swearing at her. She asked again about the phone. She said the defendants became aggressive, so she entered the cell. The defendants were seated. She then started speaking to the 1st defendant. She told the 1st defendant to stand up so that she could search her. She stated that the 1st defendant refused to stand up and was angry. She said she asked the 1st defendant again, and she refused again. She said that she then went closer to the first defendant. She stated that as she approached, the 1st defendant started kicking, and she was avoiding all the kicks. She then held the 1st defendant down, and the 1st defendant also held onto her uniform. She said that she told the 1st defendant that if she did not comply, she would be forcefully searched. The 1st defendant tried to stand up, but she was still searching the 1st defendant for the phone. The struggle continued. PW3 kept pushing the 1st defendant down, and the 1st defendant kept trying to stand up. Whilst searching, she realised that the 1st defendant did not have a phone on her, but instead, PW1 found a vape under her.
42. PW3 gave evidence that after she search the 1st defendant then she searched the 2nd defendant. She found the phone on the second defendant.
43. During cross-examination, PW3 was evasive, especially about the first encounter with the defendants, which is the reason for stopping the defendants and hearing the 2nd defendant telling the 1st defendant to leave.
44. PW3 was also confused about a certain part of the evidence. Also, it was evasive about the circumstances surrounding the search of the 1st defendant, particularly why she approached the 1st defendant to search for the phone when she knew that the 2nd defendant had called her mother using a phone.
45. Prosecution did not re-examine PW3.

Evidence of PW4

46. PW4 evidence up until when the defendants were put into the police van can-cage is

consistent with PW1's evidence.

47. I will only summarise evidence that is different from the PW1's version of what happened, or parts of it which is inconsistent with it.
48. PW4 gave evidence that they had suspicions about the defendants because they were coming out of Meneng Hotel onto the main road. PW4 said that the 1st defendant was driving the motorbike normally.
49. PW4 gave evidence that when the defendants made the initial stop in Meneng District, it was the front seat passenger who asked the defendants if they were drinking alcohol, and after this question, the defendants sped off.
50. PW4 gave evidence that he had accompanied PW3 to the cell area to question the defendants about a phone. He said that when they reached the cell, PW3 asked the defendants if they had a phone, and both denied having one. PW4 stated that PW3 then went inside the cell and approached the 1st defendant, asking her if she had the phone. PW1 denied having it. PW3 told the 1st defendant that she would be searched. 1st defendant refused. PW4 stated that PW3 told the 1st defendant that she would use force. He said that when PW3 held the 1st defendant down, the 1st defendant kicked PW3's chest. When she didn't find the phone with the 1st defendant, she went to the 2nd defendant and asked about it. PW3 saw the phone on the 2nd defendant.
51. During cross-examination, PW4 confirmed that the 1st defendant was seated while she was being searched. He confirmed that while seated, the 1st defendant kicked PW3's leg, which PW3 dodged. He also said that he saw the 1st defendant's leg on PW3's chest while the 1st defendant was struggling.
52. PW4 confirmed that he was standing at the door of the cell when PW3 was searching the defendants.

Evidence of PW5

53. PW5 gave evidence that she was the investigating officer in this matter and that she conducted the Record of Interview of the defendants.
54. During cross-examination, PW5 confirmed that the defendants did not sign the Record of Interview. Furthermore, PW5 and the witnessing officer also failed to sign the Record of Interview.
55. PW5 also said that during the Record of Interview, the defendants' legal representative was asked not to talk. However, she mentioned that the defendants had consulted their legal representative before the interview.

DEFENCE CASE

56. The 1st defendant (“DW1”) gave evidence in her defence. Further, the 2nd defendant (“DW2”) voluntarily gave evidence on behalf of DW1.
57. I have considered the evidence of DW1 and DW2. I will provide a summary of the evidence that is essential to my determination of the charges before me as follows.

DW1

58. DW1 gave evidence that she is now working as a nurse aide, and that she is also married and 8 months pregnant. She stated that on November 6, 2022, she was at the Meneng Hotel with DW2. They left sometime between 1:30 a.m. and 2 a.m. They left on a motorbike, which DW1 drove. As they were exiting the hotel, another motorbike was behind them. They turned right, and so did the motorcycle behind them. However, the motorbike behind them then made a turn and went in the other direction.
59. DW1 gave evidence that she was driving at a slow speed and that she was also driving normally. She said that when they neared Ataro, she noticed a vehicle behind her with its headlights on, and someone from the vehicle was shouting at her to pull over. She stopped the motorbike, and a police vehicle pulled up behind them. She stated that DW2 suggested to her that she proceed driving; she looked back and saw two male police officers coming towards them. She looked forward and started to drive off. She said that she felt fearful because she saw the two male officers shouting.
60. DW1 gave evidence that she drove towards Yaren District. She stated that there weren't many cars on the road, but confirmed there were a few. After reaching the Yaren District junction, she took the airport road and went towards the Boe District. The police vehicle was following them to Boe District, right up to “Tawaki’s residence”, where they took a shortcut and then came back onto the main road and headed towards Yaren District, travelling on the road going around the airport. When they reached the junction, the police vehicle, coming from the opposite direction, stopped on the road. DW1 went around the police vehicle, and at the junction, they made a left turn onto the airport road. When the defendants reached the “Multicultural Centre”, the police vehicle came right beside them, and PW1 popped his head out of the door window with a stick in his hand and shouted at them to stop. However, instead of stopping, they turned around and headed towards Meneng District. DW1 stated that it was dark there and she was afraid to stop, while DW2 was calling the police emergency line, telling them they were scared because a police vehicle was following them.
61. DW1 gave evidence that they made a stop opposite “Bi-Rite Store” next to the footpath. She said that the police vehicle stopped right next to them, and PW1 got out, pushed the motorbike, and started hitting it with a stick. PW4 was following PW1. PW1 was

shouting, *“Is this what you want?”* She stated that at that point, they were under the motorbike. While PW1 was shouting, DW1 saw PW3 approach them. She asked for help from PW3, telling her that she was afraid. PW3 responded by saying, *“Is this what you want?”*.

62. DW1 gave evidence that PW3 grabbed her by the collar and told them to stand up while pulling her up too. When DW1 stood up, PW3 pushed her from behind and told her to go to the police van can cage. While DW1 was walking, PW3 continued to push her from behind. She stated that she was not resisting or using obscene language, but PW3 kept on pushing her. DW1 and DW2 then got onto the police van can cage.
63. DW1 gave evidence that during this time, she was not told that she was being arrested. After that, they were taken to the police station. At the police station, DW1 and DW2 were taken to the Watch-house, where they were searched. PW3 then escorted them to the cell. She stated that after half an hour, DW2 called her family to help them get released, and shortly after, PW3 came to the cell area and shouted, “You are the one calling your mother!” Then PW3 entered the cell and turned to DW2, asking her, “Are you the one calling your mother?” PW3 then turned to DW1 and approached her, asking if the phone was with her. DW1 stated that PW3 then pulled her by her hair, and with the other hand, she was searching her body for the phone and pulled her pants down to her knees.
64. DW1 gave evidence that DW2 was beside her and was covering her from PW3 and was telling PW3 to stop. She stated that PW4 then came and told PW3 to stop assaulting DW1. Then PW3 stopped and turned to DW2, doing the same thing to her. PW3 found the phone in DW2’s trousers. She also stated that the officers did not tell them why they were being detained, and that they were detained for close to 20 – 23 hours.
65. DW1 gave evidence that they were then escorted into the police van can cage, and taken to the courthouse. They weren’t told anything. In court, they did not know what was happening, and that another detainee who had been taken to court with them that day said to them that they would be taken to the “correctional centre”. She stated that they were remanded for one month.
66. During cross-examination, it was put to DW1 that she was driving fast and swerving on the road. She agreed to the prosecutor's proposition that she was suggesting the police officers were lying.
67. She confirmed that after having stopped for the police, she then sped off from them. She also confirmed that she left without the police officer's permission. When she left, the police officers followed, but she did not stop for them.
68. It was put to DW1 that she had left the scene because she knew that she was under the influence of alcohol and did not want to be caught by them. DW1 denied it.

69. It was put to DW1 that she overtook vehicles when fleeing the police officers. DW1 denied it, stating that there was only one car in front of her while they were travelling on the road. She said it had turned off the road, so they did not have to overtake it.
70. It was put to DW1 that PW2 was waving his wand to stop them from afar. DW1 responded that he waved the wand when they were about to approach PW2. She conceded that they did not stop and instead went past PW2. She also acknowledged that during a road blitz, road users should slow down and allow officers to check them. Furthermore, she conceded that she had chosen not to stop.
71. DW1 conceded that when initially travelling towards Boe District, there were a lot of street lights along the way where she could have stopped, but she chose not to stop. She also conceded that she did not stop when the police stopped their vehicle in front of them near the Yaren District junction after their return towards Yaren District from "Tawaki's residence".
72. It was put to DW1 that she was lying about being scared of the police officers and that she was trying to escape the police officers because she didn't want to be caught under the influence of alcohol. It was also put to her that the only reason she stopped opposite the "Bi-Rite Store" was that she could not escape the police officers. She denied them both.
73. It was put to DW1 that PW1 said, "You guys want to be killed, are you crazy?" while hitting her motorbike. She agreed that PW1 was hitting her motorbike with a stick, but she disagreed about what PW1 said. She stated that PW1 said, "Is this what you want? Is this what you want?" and that he was also waving the stick at them and pretending to hit them.
74. It was put to DW1 that PW1 did not push her motorbike and that he did not wave the stick at them pretending to hit them. DW1 disagreed.
75. It was put to DW1 that PW3 smelled alcohol on her and DW2. She denied consuming alcohol.
76. It was put to DW1 that PW3 told her that she would be detained at the Watch-house. She denied being told that.
77. It was put to DW1 that PW3 and PW4 were outside the cell when they were asking about the phone initially. DW1 denied this, stating that PW3 was walking into the cell when asking about the phone.
78. DW1 confirmed that when she was asked about the phone, she told PW3 that she did not have the phone. DW1 also stated that when PW3 grabbed her hair and pulled her

pants down, she then told PW3, “Are you satisfied?” and “Are you horny?” because she pulled her pants down. She also confirmed that she told PW3, “Uneducated”.

79. DW1 stated that she couldn't kick PW3 because she was seated down and PW3 was right over her. DW1 also said that she was never asked to be searched and that she was forcefully searched in the cell.
80. She conceded that she was in the wrong when she didn't stop at the traffic blitz. She also acknowledged that if she had been driving at a normal speed, the police officers would have caught up with her in Meneng District.
81. During re-examination, DW1 clarified that she did not know that there was a female officer in the police vehicle during the period the police officers pursued her in the police vehicle.

DW2

82. DW2 gave evidence that she is not married and that she is working for the Nauru Police Force as a clerical officer.
83. DW2's evidence corroborates DW1's evidence.

ANALYSIS

84. I have considered all the evidence individually and also as a whole.
85. It is essential that I determine the facts before making my analysis and determination concerning the two offences with which the 1st defendant is being charged.

What are the established facts?

86. I have considered the evidence of the witnesses.
87. There are a few conflicting pieces of evidence which need to be resolved; apart from which, I accept all other evidence. The substantive contradictory evidence is in relation to the following:
 - i. Was the 1st defendant driving normally when they came out of Meneng Hotel?
 - ii. Were there a lot of vehicles on the road at the material time in question?
 - iii. What happened in the detention cell (PW3 & PW4 v the defendants)?

Was the 1st defendant driving normally when they came out of Meneng Hotel?

88. I found the evidence of PW1 the most reliable. His evidence was that he saw the 1st defendant swerving while she was driving. PW3 corroborates this. PW3 also gave evidence that she smelt alcohol from the 1st defendant's breath when she was escorting her to the police van can cage. I accept PW1's and PW3's evidence because the defendants chose to flee from the police officers when they were stopped for questioning on suspicion of drunk driving. The only reasonable inference that I can draw from the 1st defendant's conduct of fleeing from the police officers is that they did not want the officers to catch them while they were under the influence of alcohol.
89. There is also conflict in evidence as to whether the police officers got out of the vehicle at Meneng District. In this regard, I accept the evidence of PW1 and PW3 that they were in the police vehicle when pulled over beside the defendants and asked them to stop.

Were there a lot of vehicles on the road at the material time in question, and was the 1st defendant speeding?

90. There was a conflict in the evidence in relation to the number of vehicles on the road. Initially, the evidence was that the streets were very busy, but it was later agreed that only a few vehicles were on the road. Further, PW2 gave evidence that he could not stop the defendants and that they went by him at the traffic blitz. If there were many vehicles on the road or in front of the defendants, they would have had to slow down along with the other vehicles. PW2 did not give evidence that there were a lot of vehicles in front of the defendants and that they overtook them all to get past him. Therefore, I find that the defendants' evidence regarding the absence of vehicles in front of them, except for the one that turned off the road, is more reliable, and I accept their evidence in that regard. However, I do accept that there were other vehicles and road users on the road, as per the evidence before me, and that some children told the police officers about the route the defendants took from "Tawaki's" residence.
91. The defendants say that they were not speeding. However, to flee the police officers and lose them along the way, the 1st defendant would have needed to drive fast; otherwise, the police would have easily caught up to them in Meneng District during the initial part of the chase. The police officers' evidence regarding the speed at which the 1st defendant was driving her motorbike is more reliable, and I accept it accordingly.

What happened in the detention cell (PW3 & PW4 v the defendants)?

92. From the evidence before me, it is clear that PW1 and PW3 were frustrated with the defendants. The level of anger directed towards the defendants by PW1 is evidence of the frustration. Further, the evidence of PW3 is that she condoned such behaviour as PW1's senior officer. In this regard, I accept the defendants' evidence of what

transpired opposite the “Bi-Rite Store”. The police officer in this case engaged in immediate retribution and punishment, which they should not have done.

93. PW3 and PW4 were evasive during their cross-examination concerning what transpired at the detention cell regarding the search for the phone. Further, PW3 could not explain why she had to search the 1st defendant for the phone first, even though she knew it was the 2nd defendant who made the call and that the 2nd defendant’s mother came to the station looking for the 2nd defendant. Therefore, it was most likely that the phone was with the 2nd defendant, and in fact, it was found on the 2nd defendant. The only reasonable inference that I can draw from all the evidence before me is that PW3 was still taking out her frustration on the 1st defendant. In light of these, I find that the defendants’ evidence regarding what happened in the detention cell is more reliable. Therefore, I accept their evidence on it.
94. The defendant’s counsel raised an issue concerning his clients’ arrest. I will not determine the legality of the arrest because the outcome would be of no utility in this matter, as the evidence in relation to the obstruction of police officers establishes that the obstruction took place before the arrest. It would just become an academic exercise. I hold this view because there is no evidence before me that was obtained from the defendants as a result of an unlawful arrest. A finding of the unlawfulness of the arrest would not operate as a defence in this matter to absolve the defendants of the crime with which they have been charged, especially in the current circumstances. Furthermore, upon reviewing the evidence as a whole, I am of the opinion that the defendants will not face any prejudice if I do not determine the legality of the arrest.

Whether the prosecution has proven beyond a reasonable doubt that the 1st defendant obstructed Senior Constable Pania Depoudu (“Count 1”)?

95. Section 12 of the *Crimes Act 2016* 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.

96. Section 22(1) & (2) of the *Crimes Act 2016* 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...

97. Section 13 of the **Crimes Act 2016** 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.

98. Further, section 14 of the **Crimes Act 2016** 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.

99. For count 1, the 1st defendant is charged with obstructing police officers. Section 242 of the Crimes Act 2016 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.

100. 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

101. 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.
102. 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?...*

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

- i. The public official was a police officer, and he was obstructed, and the 1st defendant was reckless about the conduct that obstructed the police officers.
- ii. The police officer was acting lawfully in the exercise of his or her duties.
- iii. The 1st defendant intended to obstruct the police officer in the execution of his or her duty.

104. I have considered the evidence before me. While the particulars of the offence could be better particularised, and the reference to obstruction to PW3 could have included the other officers present with her at the time of the obstruction and the place of the obstruction, however, these defects are not fatal to the charge, and do not nullify the charge of obstruction against the 1st defendant because she was able to answer the charge laid against her adequately. Further, she was not prejudiced in any way concerning establishing her defence in relation to the charge of obstruction: see *Hussein and others v Republic* [2017] 1 LRC 763.

105. I have considered the evidence before me and find that the 1st defendant did obstruct the police officers in Meneng District when she stopped for the police officers and then

fled from the scene, resulting in a chase between her and the police officers. The police officers were acting lawfully and had stopped the 1st defendant based on the suspicion that she was driving under the influence of alcohol. The evidence is clear that the 1st defendant deliberately left the scene, and I have already drawn an inference from this fact that she had fled the scene to avoid being caught under the influence of alcohol. Fleeing the scene made it difficult for the police officers to carry out their duties, as they had to chase the defendants for some time to apprehend them. This even led to their frustration. In light of this, I find that the prosecution has proven beyond a reasonable doubt that on 6 November 2022, the 1st defendant obstructed police officers whilst they were in the lawful execution of their duties.

Whether the prosecution has proven beyond a reasonable doubt that the 1st defendant was driving dangerously contrary to section 67(1)(a)(b)(c)(d) and (ii) of the Motor Traffic Act 2014 (“Count 2”)?

106. For count 2, the 1st defendant is charged with dangerous driving. Section 67 of the Motor Traffic Act 2014 provides as follows:

Dangerous driving

(1) A person who drives a motor vehicle upon a public highway negligently, furiously, recklessly or at a speed or in a manner dangerous to the public, commits an offence and is liable upon conviction to the suspension of his or her driver’s licence for a period of 1 year and is subject also to any of the following:

(a) a fine of \$1,000;

(b) imprisonment for 6 months; or

(c) both a fine and imprisonment.

(2) In considering whether an offence has been committed under this Section, the court shall have regard to all the circumstances of the case, including:

(a) the nature, condition, and use of the public highway upon which the offence is alleged to have been committed, and

(b) to the amount of traffic which was, or might reasonably have been expected to have been, upon that public highway at the time.

107. I have considered the evidence before me and find that the 1st defendant was speeding to flee the police officers. This act was reckless because not only did she put her own life in danger together with the 2nd defendant, she also put the lives of the other road users at risk as well. The police officers themselves had to drive fast to catch up to them, and the conduct of the 1st defendant also put them at risk. Furthermore, fleeing from police officers involves breaking road rules, which includes the fact that the 1st defendant was speeding and failed to stop at a traffic blitz. In light of this, I find that the prosecution have proven beyond a reasonable doubt that the 1st defendant was driving dangerously on 6 November 2022 as charged.

VERDICT

Count 1

108. For the foregoing reasons, I find the 1st defendant guilty of count 1 of the charge laid against her.

Count 2

109. For the foregoing reasons, I find the 1st defendant guilty of count 2 of the charge laid against her.

Dated this 10th day of October 2025.



Resident Magistrate
Vinay Sharma

