



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 05 of 2023

BETWEEN: THE REPUBLIC

PROSECUTION

SUMITCH DETENAMO

ACCUSED

BEFORE: Keteca J

Hearing of Closing Submissions: 07th November 2025

Date of Judgment: 12th December 2025

Catchwords: Intimidating or Threatening a Police Officer: Contrary to Section 77A of the Crimes Act 2016 (**the Act**); Causing Harm to a Police Officer: Contrary to Section 77(a)(b)(c)(d)(i) of the Act.

Appearances:

Counsel for the Prosecution: **S. Shah**
Counsel for the Accused: **R. Tom**

RULING

BACKGROUND

1. The accused is charged with the following offences:

COUNT 1

Statement of Offence

Intimidating or Threatening a Police Officer: Contrary to Section 77A of the Crimes Act 2016 (the Act).

Particulars of offence

Sumich Detenamo on the 22nd of Dec 2022, at Aiwo District in Nauru, threatened Constable Kinte Harris in the execution of Constable Kinte Harris' duties.

COUNT 2

Statement of Offence

Causing Harm To Police Officer: Contrary to Section 77(a)(b)(c)(d)(i) of the Crimes Act 2016.

Particulars of Offence

Sumich Detenamo on the 22nd of December 2022, at Aiwo District in Nauru, intentionally engaged in conduct that is punching Officer Marvin Tokaibure and the conduct caused harm to Sergeant Marvin Tokaibure without his consent and Sumich Detenamo intends to cause harm to Sergeant Marvin Tokaibure because Sumich Detenamo believes that Sergeant Marvin Tokaibure is a police officer and that Sergeant Marvin Tokaibure is in fact a police officer.

CLOSING SUBMISSIONS BY THE STATE

2. Counsel identifies the elements of the offence in Count 1 and summarises the relevant evidence. In his evidence PW1, Constable Kinte said that the accused was drunk and was aggressive towards him.

Question: What happened?

Ans: I was telling him (the accused) to get off his bike and he refused. I was trying to help him get off his bike and go back inside and wait for designated driver.

Question: What happened next?

Ans: He was challenging me to a fight. He said- 'we fight first before I comply.'

Question: What else did he do?

Answer: He spit on me and swear and told me to 'fuck my mother.'

For Count 2, PW1, PW3 and PW4 stated that the accused punched PW4, Sergeant Tokaibure. Counsel concludes that all the elements of the offences in both Counts 1 & 2 are satisfied and that I should find the accused guilty accordingly.

SUBMISSIONS BY DEFENCE COUNSEL

3. On Count 1, Counsel refers to the definition of '*intimidation*' or '*intimidates*' under Section 8 of the Act and submits that the words used by the accused and the accompanying conduct do not amount to '*intimidation or intimidates.*' Counsel adds that since the arrest of the accused was unlawful, 'any contact or injury arising out of resistance to an unlawful arrest' does not give rise to an offence under Section 77A of the Act. Counsel further submits that 'mere vulgarity- such as saying 'fuck your mother'- while deeply disrespectful, does not constitute threat of harm.' There is no actual threat and – 'the evidence shows only offensive and defiant language, but no physical movement, approach, attempt to strike, or any immediate means or intention to cause harm.'

4. On the accused's arrest, Counsel submits that PW4, Sgt Tokaibure testified that he carried out the arrest as he was the only officer on the scene that had handcuffs. PW4 did not inform the accused as to why he was being arrested. This amounts to unlawful arrest.
5. For Count 2, Counsel submits that since the arrest was unlawful- 'the accused's resistance was not an assault and cannot give rise to liability under Section 77 of the Act. Further, Counsel adds, there is no medical report on any injury caused to PW4. This shows that the prosecution has not proven the element of 'harm' caused to PW4.

THE EVIDENCE

6. **PW1, Constable Kinte** was on night shift duty on 21st Dec 22. At 0730 they attended to a report to remove some drunkards at Aiwo District. He was with Constables Rachael Notte and Jonas Menke. He approached the accused and his brother and told them to get off their bikes as they were drunk and to look for a designated driver. He is related to them. The accused got aggressive and refused to comply. The accused challenged him to a fight, spat at him and told him- 'Fuck your mother.' The accused's brother tried to calm the accused down.

Question- How did you feel?

Ans- He offended me but I still did my job.

The accused went back into the drinking area. There was a party there. They were in groups of 10, drinking. Sgt Kirsty called Base for handcuffs. Sgt Marvin arrived with the handcuffs and approached the accused. Sgt Marvin told the accused of the allegations, tapped his shoulder and told him that he'll be arrested. As Sgt Marvin grabbed the accused's wrist, the accused suddenly punched Sgt Marvin. It was a closed fist. PW1 restrained the accused and applied the handcuffs on the accused. They took the accused to the Police Station.

7. On cross- examination:

Question- The threats did not prevent you from executing your duties?

Ans- I still executed my duties.

Question- This incident was at a private function?

Ans- Yes

Question- Minister was there?

Ans- Can't recall

Question- Complaint from who?

Ans- From Base, call sign- 'YB'. I saw the accused and his brother on their bikes, about to leave the area. I told them to get off their bike as they were drunk. I told them to get inside the house and get a designated driver. They went back inside the house.

Question- You were not threatened or intimidated?

Answer- I was threatened. They then followed my instructions.

Question- The arrest was unlawful?

Ans- Lawful. Sgt Marvin informed them of allegations- 'what he did to me.'

8. **PW2- PC Racheal Notte-** they received a report of a disturbance opposite the power station. Arriving at the scene, the accused was trying to leave on his bike. Kinte tried to stop them as they were not wearing any helmet and drunk. Sgt Marvin arrived and gave the handcuffs to Kinte. They called the accused to come out. The accused elbowed Sgt Marvin.
9. On cross-examination- she saw the accused elbow Sgt Marvin outside the building. She did not see any police officer get punched in the building.
- Question- What was the report you attended?
 Ans- A party getting noisy from the night before. It was a Christmas party for Utilities.
- Question- What did the accused say?
 Ans- **I know where you live. I'll kill you in your sleep.**
10. When questioned by the court as to what offence the accused and his brother had committed, PW2 said- 'we were told to remove drunkards.'
11. **PW3- Inspector Kirsty Karl-**whilst on patrol with PW1 and PW2, they received a noise complaint and for them to disperse drunkards. Constables Kinte and Jonas approached a woman there- told them to disperse because of the noise complaint. Some drunkards started dispersing. Constable Kinte approached two persons and told them to get off their bike and find another ride as they were drunk. The accused refused to get off his bike, threatened, spat and swore at Kinte. He told Kinte- 'he'll hit his head wherever he sees Kinte.' **The accused kept challenging Kinte to a fight.** Kinte refused to fight him and told the accused that he was 'doing him a favour and helping him.' **The accused said that he knows where Kinte lives and he'll go after him'**. The accused's younger brother convinced the accused to get off his bike and to go back into the building where they were drinking. She called Base for handcuffs. Sgt Marvin arrived with the handcuffs. She informed Sgt Marvin of what happened. Sgt Marvin went inside the building, approached the accused and informed him of the allegation. She was right beside Sgt Marvin who grabbed the accused's wrist and told him that he was being arrested for the offence he committed. **The accused freed his wrist and punched Sgt Marvin's face.** Sgt Marvin, Constables Kinte and Jonas took the accused down and he was handcuffed. The accused kept struggling calling his friends to help him. No one intervened.
- Question- How could you tell that he was drunk?
 Ans- He drove his bike about 5 meters. He was swerving and could not control his bike. He was not balanced.
- Question- Sgt Marvin injured?
 Ans- Can't recall.

12. On **cross examination**- Question-Why no sobriety test on the accused?

Ans- Accused was drunk and very aggressive. Couldn't do the test. He was taken straight to the cell.

Question- What did the accused say?

Ans- I know where Kinte lives and I will kill him.

Question- He never punched Marvin?

Ans- I saw him punch Marvin.

Question- On the accused driving the bike for 5 meters- he was not driving?

Ans- He did. He was about to leave the area. He drove the bike and stopped it a few times. Kinte stopped him.

Question- That did not happen?

Ans- I saw that.

Question- Any medical report on Marvin?

Ans- I can't recall.

13. When questioned by the court on what offence the accused allegedly committed, PW3 said:

'At first no offence but he committed an offence when he drove under the influence.'

14. **PW4, Inspector Marvin Tokaibure**-he received a call from Inspector Kirsty that a patrol needed handcuffs for a drunkard causing a nuisance. He attended to the scene alone. He gave the cuffs to Constable Kinte. He was briefed that the accused was obstructing and evading the police officers from arresting him. He, Kinte and Jonas went into the building. He approached the accused, who was seated. He stood beside him, tapped his shoulder and told him of the allegation and his rights. The accused was confused. He told the accused- 'Sumich, come with us, don't escalate anything.' He complied asking- 'what is the allegation? I held his shoulder and said- 'Come with us.' **'I felt something hit me like a punch or elbow on my face.'** I looked at him and held him. Kinte and Jonas restrained him on the ground.' **The accused punched me.'** I didn't see the punch but felt like someone punching me.'

Question- Did you fall?

Ans- I did not fall.

Question- What did the accused do?

Ans- He resisted a bit but then complied. Jonas and I held him on the ground. Kinte handcuffed him. I did not consent to being punched on the face. I was in uniform when this happened. The accused and I know each other as he is a relative.

Question- Any medical done?

Ans- Can't recall

Question- Any injury to you?

Ans- Just felt some pain

Question- Why didn't you go to hospital?

Ans- Busy time- special roster. Just handed him over to morning shift.

He has personally forgiven the accused.

15. On cross-examination- He was not the IO.

Question- What did Sgt Kirsty report?

Ans- To assist them arrest the accused for obstructing and evading arrest,

Question- What was the accused obstructing?

Ans- Obstructing and escaping. They were going to arrest the accused, he was obstructing and evading.

Question- Arrested for what?

Ans- They told me he was on a motor bike and drunk.

Question- You said obstruction and evading?

Ans- Yes, that's what I was told. That's the offence I went to arrest him for.

Question- on the assault/punch, it could have been accidental that he lifted his hand and brushed your face?

Ans- Yes.

Question- He didn't cause you any harm – you didn't go to hospital?

Ans- Yes

16. On Re-examination-

Question- You were briefed about him being drunk on a motor bike before you went inside?

Ans- Yes

Question- The elbow/punch that brushed your face could be accidental- why accidental?

Ans- Because I didn't see it but the impact was very hard/strong

Question- No harm because you didn't go to hospital, explain.

Ans- Because no bruises or injuries

Question- Any harm from assault?

Ans- Yes

17. When asked by the court as to what harm he suffered- PW4 said -'he suffered pain.

CASE for the ACCUSED

18. The accused opted to give sworn evidence. On 22nd December 2022, he was at a Christmas party at the Infrastructure building, Aiwo. The company headed by his Boss, Berilyn Jeremiah provided the drinks. The police arrived that morning and told his Boss to go as party was over. **He and his brother left the place and he was not fully drunk.** PW1, Constable Kinte told him that he cannot drive the bike. He went back into the building where the party was. When asked – 'what did you say to Constable Kinte? He responded- **"I just challenged him to a fight. I did not fight him.'** Sgt Marvin approached him and said he will be arrested for threatening a police officer. Sgt Marvin grabbed him. **He doesn't remember punching or elbowing Sgt Marvin in the face.**

19. On **Cross- examination**, he was drinking the whole night until the morning. He denied driving his motorbike that morning. He said that he 'blacked out' and did not know what was going on. He agreed that Constable Kinte told him not to drive. He agreed that he challenged PW1 to a fight. He does not remember swearing at or spitting at PW1. The reason that Sgt Marvin told him for his arrest was that he threatened a police officer.

Question- You punched Sgt Marvin?

Ans- Not a punch but elbowed him. **He grabbed my hand and I elbowed him.** I don't remember where I hit him. I tried to free myself as I didn't do anything wrong.

20. On **Re- examination-**

Question- Blacked out but had knowledge of the party?

Ans- Yes. I didn't drive my bike before the officer came.

Question- The elbow- intentional or accidental?

Ans- Accidental.

CONSIDERATION

ELEMENTS of the OFFENCES

21. **Count 1-** Section 77A- Intimidating or threatening a police officer

- A person (Sumich Detenamo) commits an offence
- If the person
- Intimidates or threatens
- Police officer
- In the execution
- Of the police officer's duties

22. The accused was identified by all the prosecution witnesses. Did the accused intimidate or threaten Constable Kinte? Section 8 of the Act *defines '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.'*

Section 8 defines 'threat' as- *a threat directly or indirectly communicated by words, written or spoken, or by conduct, or partly by words and partly by conduct.'*

The accused challenged Constable Kinte to a fight. Not once, but several times. The accused admits this. He swore at Constable Kinte saying- 'Fuck your mother.' According to PW2- the accused said-'I know where you live. I'll kill you in your sleep.' This is confirmed by PW3. Under Section 8 above, the words uttered by the accused against Constable Kinte amount to threats directly communicated by words by the accused.

Do the same words amount to use of violence or threats to compel Constable Kinte to abstain from doing any act which he has a legal right to do? To answer this question, another question needs to be asked first.

What was the legal right that Constable Kinte was attempting to do? From the evidence of PW1, he instructed the accused to get off the bike and find another person to drive him as the accused was drunk. PW3, who was the most senior police officer on the scene said, that the offence committed by the accused was when he drove his motorbike whilst under the influence of alcohol.

Do police officers have powers to arrest without warrant a person they suspect of driving a motor vehicle whilst under the influence of alcohol?

Section 114 of the *Motor Traffic Act 2014* (the MTA) provides:

'For the purposes of this Act, a police officer may arrest without warrant any person whom the police officer has reasonable cause to believe is:

- (a) Driving or attempting to drive a motor vehicle without a driver's licence or has had his or her driver's licence cancelled or suspended;*
- (b) Contravening the provisions of this Act dealing with driving under the influence of alcohol or drugs;*
- (c) Responsible for the death of a person due to dangerous driving; or*
- (d) Obstructing a police officer or any other person carrying out his or her duties pursuant to this Act.*

Did PW3, Inspector Kirsty have reasonable cause to believe that the accused was driving under the influence of alcohol?

PW1, PW2, and PW3 all described the accused as aggressive and drunk. PW3 was asked-

Question- How could you tell that he was drunk?

Ans- He drove his bike about 5 meters. He was swerving and could not control his bike. He was not balanced.

Does Section 114 also apply to a motorbike? It does. The definition of 'motor vehicle' under Section 5 of the *Motor Traffic Act 2014* includes 'motorcycles.'

From this evidence, I find that PW3 had 'reasonable cause to believe' that the accused drove his motorbike/ motorcycle whilst under the influence of alcohol.

I again pose the question- **Do the same words amount to use of violence or threats to compel Constable Kinte to abstain from doing any act which he has a legal right to do?** I find that Constable Kinte had the legal right to arrest the accused without warrant based on the reasonable suspicion that the accused drove his motorbike whilst under the influence of alcohol.

23. I find that all the elements of Section 77A of the Act are satisfied.

Count 2- Causing harm to a Police Officer.

24. The elements of the offence are-

- The person (Sumich Detenamo)
- Intentionally engages in conduct
- The conduct causes harm to Sgt Marvin without his consent
- Sumich believed Sgt Marvin is a police officer
- Sgt Marvin is in fact a police officer.

25. The identity of the accused is not in dispute. **Did the accused intentionally punch Sgt Marvin?** PW1 and PW3 testified that they saw the accused punch Sgt Marvin on the face. PW2 saw the accused elbow Sgt Marvin outside. She did not see the accused punch Sgt Marvin inside the building. The accused admits elbowing Sgt Marvin to free himself. I note that the accused had been drinking the whole night till the altercation in the morning. Although the accused claims that he 'blacked out' and cannot remember punching or elbowing Sgt Marvin in his evidence in chief, on cross examination he admitted elbowing Sgt Marvin to free himself. Under cross examination the accused said- **'He grabbed my hand and I elbowed him.'** On Re- examination, the accused says that the elbowing was accidental. I prefer the evidence of PW1, PW3 and PW4 that the accused punched Sgt Marvin's face on the day in question.

26. **Was the punch intentional or accidental?** I remind myself of the definition of 'intention' under Section 17 of the Act. To answer this question, I need to look at the conduct of the accused leading up to the assault of Sgt Marvin. The accused was firstly approached by Constable Kinte not to ride his bike as he was drunk. Constable Kinte told the accused that the police were helping him so he can get a 'designated driver.' The most senior police officer on the scene, PW3 saw the accused attempting to drive his bike. The accused couldn't balance himself. The accused then started challenging Constable Kinte to a fight. The accused swore at Constable Kinte's mother and said- 'I know where you live and I will kill you in your sleep.' The accused was aggressive. When approached by Sgt Marvin, the accused again became aggressive. The accused admitted elbowing Sgt Marvin. Based on the evidence discussed above, I find that the accused meant to engage in the conduct of punching Sgt Marvin's face.

27. **Did the punch by the accused cause harm to Sgt Marvin?** Sgt Marvin did not seek medical attention after being punched by the accused. It was a busy period as the police were on 'special roster.' He did not suffer any injuries either. Does this mean that Sgt Marvin did not suffer any harm? From the evidence, Sgt Marvin said- the **'impact of the punch was very hard/ strong.'** When asked as to what 'harm' he suffered, Sgt Marvin said that he *'suffered pain.'* 'Physical harm' is defined under Section 8 of the Act to include 'pain'. I therefore hold that the punch by the accused on Sgt Marvin caused him harm.

28. Did the accused know that Sgt Marvin was a police officer? The evidence shows that Sgt Marvin is related to the accused. He was in uniform when he joined the patrol team to apprehend the accused. I find that the accused believed that Sgt Marvin was a police officer.

29. I remind myself of the burden of proof under Section 25 of the Act. Considering the totality of the evidence, I am certain that the accused committed the offences in Count 1. As to Count 2, as there were no aggravating circumstances as defined under Section 79 of the Act, I find the accused guilty of Causing Harm to Police Officer : Contrary to Section 77 (a) (b) (c) (ii) of the Act.

CONCLUSION

30. My findings are:

- i. Count 1- Guilty.
- ii. Count 2- Guilty

DATED this 12th Day of December 2025


Kiniviliame T. Keteca

Judge

