



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

Criminal Case No. 06 of 2023

BETWEEN : **THE REPUBLIC**

PROSECUTION

AND : **CRAVEN DETABANE**

DEFENDANT

BEFORE: **Keteca J**

DATE OF HEARING: **19,20, 22 and 28 February 2024**

DATE OF JUDGEMENT: **26 April 2024**

CASE MAY BE CITED AS: **Republic v Detabane**

CATCHWORDS: **Causing harm to a Police Officer; Section 77 Crimes Act
2016**

APPEARNCES:

COUNSEL FOR THE
PROSECUTION: **A. Driu**

COUNSEL FOR THE
ACCUSED: **V. Clodumar**

JUDGMENT

INTRODUCTION

1. The information reads:

COUNT 1:

Statement of Offence

‘DRINKING’: contrary to section 17(1)(b) and (2) of the Naoero Roads Act 2017.

Particulars of Offence

CRAVEN DETABANE on the 26th day of March 2023, at Aiwo District in Nauru, did consume alcohol while travelling as a passenger in a vehicle.

COUNT 2:

Statement of Offence

CAUSING HARM TO POLICE OFFICER: contrary to section 77(a)(b)(c) & (d) and (ii) of the Crimes Act 2016.

Particulars of Offence

CRAVEN DETABANE ON THE 26TH day of March 2023, at Aiwo District in Nauru, did intentionally engage in conduct namely, by grabbing the police uniform vest of Police Reserve Officer, Anthony Dabwadauw, and punching him with his left closed fist which landed on Police Reserve Officer, Anthony Dabadauw’s right cheek facial area, followed by two more punches landing on the officer’s head, such conduct causing harm to Police Reserve Officer, Anthony Dabwadauw without his consent, and done so by CRAVEN DETABENE with the intent to cause harm believing that Police Reserve Officer, Anthony Dabwadauw, is a police officer when in fact the said Police Reserve Officer, Anthony Dabwadauw, is a police officer.

2. The Prosecution called eight witnesses, namely, PW1 Truman Gioura; PW2 Fatima MOBIT; PW3 Nordoff DETAGEOUW; PW4 Pretude Bill; PW5 Dr. Yee Yee WYNN; PW6 Kosam KAIERUA; PW7 Anthony DABWADAUW and PW8 Rendal DAGEAGO.
3. The Prosecution tendered into evidence five (5) Prosecution Exhibits. PE1 medical Report of Anthony Dabwadauw; PE2 Bundle of Photographs (5 photos) of a Red Car; PE3 Bundle of Photographs (4 Photos) of Anthony DABWADAUW; PE4(a) Charge Statement Form dated 29/03/23-Drinking; and PE5 Record of Interview of Craven DETABANE dated 29/03/23.
4. The Prosecution closed her case on 20th February 24. The Defence Counsel submitted a No Case to Answer in relation to Count 1. Both Counsels filed written submissions the next day.

5. For Count 2, the Defence called the defendant, DW1 Craven DETABANE; DW2 Marlon DONGOBI and DW3 Doubug ADIRE.

THE LAW:

Count 1: 'Drinking'

6. Section 17(1) (b) and (2) of the Naoero Roads Act 2017 provides:

(1) No person shall consume alcohol or any drugs:

(a) on a public road; or

(b) while travelling in a vehicle as a passenger or driver.

(2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or to both.

7. Section 3 of the Naoero Roads Act 2017 defines "public road" as:

any road, street, track, sidewalk, pathways, or thoroughfare and includes all carriage ways, bridges, drains, bus bays, embankments, footpaths, kerbs and gutters, and such wasteland adjoining any public road as maybe reserved for the protection and benefit of future development and used for public purposes: and(b) declared as a public road under the Roads and Maintenance Ordinance 1922.

Count 2: 'Causing Harm to Police Officer'

8. Section 77(a)(b)(c) & (d) and (ii) of the Crimes Act 2016 ('the Act') provides:

A person commits an offence, if:

(a) the person intentionally engages in conduct;

(b) the conduct causes harm to another person without the person's consent;

(c) the person intends to cause harm to the other because the person believes the other person is a police officer; and

(d) the other person is in fact a police officer.

Penalty;

(i) If aggravating circumstances apply- life imprisonment of which at least 12 years imprisonment to be served without parole or probation; or

(ii) In any other case- 20 years imprisonment, of which imprisonment term at least one third to be served without parole or probation.

ELEMENTS OF THE OFFENCE

Drinking

9. The elements for 'Drinking' that are relevant here are:
- i. The defendant

- ii. Consumed alcohol while travelling in a vehicle
- iii. As a passenger

Causing harm to police officer

- i. The defendant, Craven Detabane (Craven)
- ii. Intentionally engaged in conduct;
- iii. The conduct caused harm to police officer Anthony Dabwadauw (Anthony)
- iv. Without Anthony's consent
- v. The defendant intended to cause harm to police officer Anthony because he believed that Anthony is a police officer; and
- vi. Anthony is in fact a police officer.

PROSECUTION CASE

COUNT 1: 'Drinking'

PW1- Senior Constable Truman Gioura

10. On 26/03 23, he was on duty, on patrol around the island. Behind the Civic Center, Aiwo- police officer Kosam Kaierua called out to him to stop a red vehicle. He told the driver to wind down their windows. He smelt the strong smell of alcohol. Four people inside. He recognized two of them. Behind the driver was 'Craven' - the defendant. He told the driver to get out. The driver did. He told him his rights as he was going to be arrested for DUI. The other three were non-compliant, especially the defendant Craven who was aggressively argumentative and talking back at him. He saw bottle of Vodka, water, pure blonde and cans of VB on the floor. The cans were open. Craven had bloodshot eyes and was aggressive. Police officer Anthony Dabwadauw assisted him in getting them out of the vehicle. He took them to the police vehicle on suspicion that they were drinking in the vehicle. He arrested them and put them in the 'can cage' - police vehicle. He took the four to the station. He got off and switched on the Dragger machine.

Cross- Examination

11. Public also have access to the road behind civic. He did not see them drinking. Arrested because of the open cans and not for seeing them drinking. He drove the four to the station. He told the diver that he was being arrested for DUI. No DUI tests at Civic.

Q- you didn't tell them they were arrested?

Ans- I told them. Told driver he'll be tested for DUI. At police station, he switched on the Dragger machine and left. He didn't know the result of the DUI Dragger test.

Re-Examination

12. He reasonably suspected that driver was under the influence of alcohol- that's why he arrested him. He also suspected that the other three were drinking in the vehicle.

Q- Why?

Ans- Because Craven was aggressive. They were drunk. VB Vodka bottle in the vehicle. Opened cans.

Q- Is this the basis you arrested them for drinking?

Ans- Yes.

PW-2- Police Officer Fatima Mobit.

13. Was on duty on the day. Thoroughfare behind Civic is accessible to the public. After driver and passengers of red vehicle were taken to the police vehicle, h got in the same vehicle to move it as it was blocking the thoroughfare. It was reeking of alcohol and saw VB, Pure Blonde cans. She drove the vehicle to the Station and took photographs of the vehicle and contents. She sent the photographs via “Xender” to Senior Constable Dageago for investigations. Identified the photographs- MFI-1 that became PE-2

Cross-Examination

14. Didn't hear Truman speak to the passengers

PW-5 Police Officer Kosam Kaierua

15. Saw the red car with passengers. Suspected they were trying to avoid the police. As driver rolled down the window- strong smell of alcohol. Asked driver if they were drinking. The defendant sitting behind him said- ‘we’re not drinking’. Saw open beer cans on the floor. They were drunk. Craven appeared drunk. Slurred speech like mouth was full. Seemed not to know his surroundings.

Cross-Examination

16. Did not see anyone drinking. From the strong smell of alcohol, assumed they were drinking.

PW-6 Police Officer Anthony Dabwadauw

17. Road thoroughfare behind Civic used by the public. Passengers of red car were not sober. Fatima and he took the red vehicle to the station. Took photos with Fatima. Removed the alcohol for safe keeping and drove the car to be impounded.

COUNT 2: ‘Causing Harm to Police Officer’

PW-3 Police Officer Nordoff Detageouwa

18. Sergeant told him to remove Craven from the cell he was in and put him in another cell. From cell- 3- cell-1. Reason- Craven was shouting and swearing in Nauruan- “*You fuck your mother.*” Anthony Dabwadauw was with me. He went into the cell. Craven was lying down. Told him to get up so he can be taken to another cell.
19. Craven went ahead of him. He did not quieten down. Still swearing- motherfucker. Anthony led Craven into cell-1. He saw them argue and grabbing each other. They fought. Craven grabbed Anthony’s vest and Anthony grabbed his shirt. Craven punched Anthony. The punches landed on Anthony’s head/face. It happened right in front of him. Anthony did not expect or consent to be punched. Both Anthony and him were in police uniform. Anthony told Craven to calm down and asked why he swore at police officers.
20. He went in to help Anthony put Craven to the ground. He told Anthony to leave the cell so he can calm Craven. He is Anthony’s senior. He left Craven on the floor and closed the

cell. Craven did not stop swearing. He let Craven be. Normal to separate drunks in different cells as they may show off.

Cross Examination

21. Went to the cells after being told by Sgt Luke and the shouting and yelling.

Q- Anthony went into cell to pull Craven out?

Ans- No it was me.

Q- Anthony went in to pull Craven out?

Ans- I was there. I pulled him out.

Q- Anthony called out- "hey you, come out?"

Ans- No, I got him out. I told him to stand up, grabbed him whilst he was standing up.

Q- Craven was swearing at his friends?

Ans- No, he was swearing at the police

Q- You passed Craven to Anthony, they walked into cell-1?

Ans- Yes. They grabbed each other in the cell.

Q- Anthony slammed Craven on the floor?

Ans- They grabbed each other first. I got him down.

Q- you're not telling the truth?

Ans- when I'm there, I know what happened.

Q- You saw Craven punch Anthony?

*Ans- Yes- landed on his head, facial area. **Craven threw punch first.***

PW-6 Police Officer Anthony Dabwadauw

22. At front desk, he heard screams and banging coming from the cells. Sgt Luke said- go and see and if necessary, remove the person causing trouble. He followed his senior, senior constable Nordoff (PW-3) to the cell area. Four persons all in one cell. His senior, Nordoff brought Craven out. He followed them. Craven was still shouting. Craven went into the cell. **As he turned to lock the cell, Craven turned and punched him on his face.**

23. He did not expect it. Did not consent to it. He retaliated. Held Craven up to avoid being hit and to protect himself. Felt for his safety. Felt other blows on his face. They fell to the floor. Nordoff came into the cell to separate them and told me to leave the cell. Nordoff was worried that Anthony may beat up Craven. Craven kept swearing at him- *'Go and fuck your mother.'*

24. He felt so bad and traumatized, another police officer had to write his statement. He informed Sgt Luke. He went and got medically checked. He felt stinging on his cheek and head for two days.

Cross- Examination

Q- You opened the cell to remove that person? (person swearing)

Ans- No, Nordoff removed him.

Q- You went into the cell?

Ans- No

Q- You tried to extract him, grabbing his shirt and yanked him up?

Ans- No

Q- He tried to release himself and hit you by swinging his arms?

Ans- No

Q- Nordoff came to assist you to remove him?

Ans- No

Q- At cell 3, whilst he was walking in, you grabbed and slammed him on the floor?

Ans- No

Q- You've forgiven the accused for assaulting you?

Ans- Yes

PW-4 Dr Yee Yee Wynn

25. Examined Anthony Dabwadauwon 26/03/23. He was accompanied by police officer Truman. He said he was punched by a drunken man- on his face and head. Diagnosis- soft tissue injury on right cheek. Painful swelling on site of injury. Likely cause- blunt trauma- like a punch Prognosis- good- patient stable. No need to be hospitalized. No open wound. Recommend use of ice- pack & pain killer.

PW-7 Police Officer Rendall Dageago

26. He's the IO. Normal to use phones to take photos. Received photos from Fatima through Xender. Identified MF-1 and its now PE-2. Identified photos of Anthony- PE-3. He interviewed the defendant- Craven, he refused to sign the charge form. PEX- 3& 4- two charge statements. PEX- 5- Record of interview.

Cross Examination

Q- referred to Q9- of record of interview- he told you twice, he wanted to remain silent? Why did you continue?

Ans- Yes. Giving him a chance to explain himself.

Submission of No Case to Answer on Count 1

27. Relying on Section 201(a) of the Criminal Procedure Act 1972, Counsel for the defendant submitted that the prosecution has not made out a case against the accused, sufficiently to require him to make a defence in respect of Count 1.
28. Counsel referred to the following provisions of the Naoero Roads Act 2017-
- i. Section 17(1) (b) of the that provides for the offence of "Drinking."
 - ii. Section 3 defines what a "public road" is.
 - iii. Section 4- Application of the Act- (a) to all public roads, (b) any other public road which may be proclaimed or declared by the Minister; and (c) any road maintained by the Department
 - iv. Section 5- Declaration of public road
29. He referred to the guidelines that are relevant in considering an application of no case to answer that was covered in *Republic v Jeremiah [2016] NRSC 42* per Crulci J at paragraph 22:
- i. If there is no evidence to prove an element of the offence alleged to have been committed, the defendants have no case to answer.

- ii. If the evidence before the court has been manifestly discredited through cross examination that no reasonable tribunal could convict upon it, the defendant has no case to answer.
 - iii. If the evidence before the court could be viewed as inherently weak, vague, or inconsistent depending on an assessment of the witness reliability, the matter should proceed to the next stage of the trial and the submission of no case to answer be dismissed.
30. Counsel submits that there was no evidence “from any police officers that they saw anyone of the occupants of the red vehicle consuming alcohol while travelling in the car. Police officers Truman and Kosam presumed they were drinking because of the smell in the car and that they saw beer cans and a bottle of liquor in the car.
31. None of the police saw the accused consuming alcohol while travelling in the red car. It is not illegal to carry alcohol in a car. It cannot be excluded that the occupants drank at a home and were travelling to go somewhere else.
32. There is no evidence adduced that the thoroughfare behind the civic centre is a public road. This must be declared by the Minister and notified in the gazette.

Prosecutions Response

33. DPP also referred to *Republic v Jeremiah [2016] NRSC 42*, the law relating to the offence of ‘Drinking’ and Section 3 of the Naoero Roads Act 2017.
34. The prosecution accepts that ‘there was no direct evidence of the defendant being seen drinking in the vehicle’.
35. Counsel invites the court “to draw an inference that the defendant along with his companions in the vehicle had been drinking in light of the evidence of PW-1 Truman; PW-2 Fatima; PW-6 Kosam and PW-7 Anthony.

Discussion

36. Considering the totality of the evidence, I agree with the prosecution. From the state of the defendant of not being aware of his surroundings, slurred speech, aggressive behaviour, strong smell of alcohol from the vehicle when the window was wound down, the presence of beer cans and bottle of Vodka in the car, the unlikelihood that these beer cans and Vodka bottle were being taken to a rubbish dump - I draw the inference that the defendant consumed alcohol while traveling in a vehicle as a passenger.
37. This inference is supported by the admission of **DW-2, Marlon Dongobir** under cross-examination that he was worried about the police because his friends were drinking in the car.
38. I therefore find that there is sufficient evidence adduced by the Prosecution to require the defendant to make his defence and this matter should proceed to the next stage of the trial.

39. The submission of no case to answer on Count 1 of the Information is dismissed.

COUNT 2: 'Causing Harm to Police Officer'

(i) 'The defendant'

40. The defendant was identified that he assaulted police officer Anthony DABWADAU in the police cell by PW-3, police officer Nordoff Detageouw and the complainant, PW-6 Anthony Dabwadau.

(ii) 'Intentionally engaged in conduct'

41. The defendant disputed this. Section 17 of the Act defines 'intention' to include:

- (1) A person has 'intention' with respect to conduct, if the person means to engage in the conduct.*
- (2) A person has 'intention' with respect to a circumstance, if the person believes that it exists or will exist.*
- (3) A person has 'intention' with respect to a result, if the person means to bring it about or is aware that it will occur in the ordinary course of events.*

42. Section 8 of the Act defines 'conduct' to mean:

'an act, an omission to do an act, or a state of affairs, and includes a series of acts, or omissions to do acts'

The Evidence

43. PW-3 police officer Nordoff Detageouw said that he was instructed by Sgt Luke to remove the defendant from the cell he was in and to place him in another cell. He went into the cell. Craven was lying down. Told him to get up so he can be taken to another cell.

44. Craven went ahead of him. He did not quieten down. Still swearing- motherfucker. Anthony led Craven into cell-1. He saw them argue and grabbing each other. They fought. Craven grabbed Anthony's vest and Anthony grabbed his shirt. Craven punched Anthony. The punches landed on Anthony's head/face. It happened right in front of him. Anthony did not expect or consent to be punched. Both Anthony and him were in police uniform. Anthony told Craven to calm down and asked why he swore at police officers.

45. He went in to help Anthony put Craven to the ground. He told Anthony to leave the cell so he can calm Craven. He is Anthony's senior. He left Craven on the floor and closed the cell. Craven did not stop swearing. He let Craven be. Normal to separate drunks in different cells as they may show off.

46. PW- 6 police officer Anthony Dabwadau said this:

At front desk, he heard screams and banging coming from the cells. Sgt Luke said- go and see and if necessary, remove the person causing trouble. He followed his senior, senior constable Nordoff (PW-3) to the cell area. Four persons all in one cell.

47. His senior, Nordoff brought Craven out. He followed them. Craven was still shouting. Craven went into the cell. As he turned to lock the cell, Craven turned and punched him on his face. He did not expect it. Did not consent to it. He retaliated. Held Craven up to avoid being hit and protect himself. Felt for his safety. Felt other blows on his face. They fell to the floor. Nordoff came into the cell to separate them and told me to leave the cell.
48. Nordoff was worried that Anthony may beat up Craven. Craven kept swearing at him- '*Go and fuck your mother.*' He felt so bad and traumatized, another police officer had to write his statement. He informed Sgt Luke. He went and got medically checked. He felt stinging on his cheek and head for two days. The defendant admitted being aggressive to his friends in the cell because they had been arrested. He admits that he was swearing at them. He admits struggling with police officer Anthony. **Craven said that his punches were not to hurt police officer Anthony but for Anthony to let him go.**

49. This element will be looked at further after the defendants evidence is ventilated fully.

(iii) 'which caused 'harm' to police officer Anthony Dabwadau

50. Section 8 of the Act defines 'harm' as 'physical harm or mental or both.'

51. 'Physical harm' –

a. *Includes any of the following, whether temporary or permanent:*

- i. *Unconsciousness;*
- ii. *Pain;*
- iii. *Disfigurement;*
- iv. *Infection with a disease; or*
- v. *Any physical contact with a person to which the person might reasonably object in the circumstances, whether or not the person was aware of it at the time; but*

b. *Does not include being subject to any force or impact that is within the limits of what would be acceptable to a reasonable person as incidental to social interactions or to life in the community.*

52. There is sufficient evidence that police officer Anthony Dabwadau did suffer harm as a result of the punches thrown by the defendant. PW-4 Dr Yee Yee Wynn confirms this in her medical report which states:

Diagnosis – soft tissue injury on right cheek. Painfull swelling on site injury.

Likely cause – blunt trauma – like a punch

Prognosis – good – patient stable. No need to be hospitalized. No open wood.

Recommend use of ice-pack & pain killer.

(iv) Police officer Anthony did not consent to such conduct

53. Consent is defined in Section 9 of the Act as:

(1) 'Consent' means free and voluntary agreement by a person with the cognitive capacity to give that agreement.

(2) Without limiting subsection (1), a person's consent to do an act is not freely and voluntarily given if the consent is obtained by any of the following:

- (a) force;
- (b) threat or intimidation;
- (c) fear of harm;
- (d) exercise of authority;
- (e) false, misleading or fraudulent representations about the nature or purpose of that to which the person consents; or
- (f) mistaken belief induced by another person.

(3) Without limiting subsection (1), a person does not have the cognitive capacity to give consent to an act if one of the following applies:

- (a) the act occurs while the person is asleep or unconscious;
- (b) the act occurs while the person is intoxicated to the extent that the person cannot choose to consent or not to consent; or
- (c) the person is unable to understand the nature of the act.

(4) Without limiting subsections (1), (2) or (3), a person who does not protest or offer actual physical resistance to an act is not, by reason only of that fact, to be regarded as consenting to the act.

54. Did police officer Anthony (PW-6) consent for Craven, the accused, to cause him harm? PW-6 Police officer Anthony was with PW-3 Nordoff at the cells to remove Craven to another cell. PW-3, Nordoff got the defendant from the cell he was in with his friends. Police officer Anthony accompanied Nordoff and Craven to the third cell. As Anthony turned to lock the cell, the defendant, Craven punched him on his head and face. In his evidence, police officer Anthony did not consent for Craven to assault and cause him harm.

(v) **the defendant believed police officer Anthony Dabwadauw was a police officer and is in fact a police officer.'**

55. Under cross-examination, the defendant Craven was asked:

Q- You knew Anthony was a police officer?

Ans- Yes.

Q- He was in uniform that day?

Ans- Yes, with vest also. Like in the photos.

56. The defendant thus believed that Anthony was a police officer.

DEFENCE CASE

57. The defendant opted to give sworn evidence. On 26/03/23, at about 11-12pm, his friends, Dobuk, Martin and Scotty came to his place and they started drinking. At about 4-5pm, they left his home and intended to see someone at Buada. He did not agree to leave as he was concerned about the police.
58. At Menen junction, he suggested that they turn left and go inland. Instead their driver turned right towards Aiwo. Marlon was the driver. Police stopped them at the back of the Civic centre. Stopped by police officer- Kosam who asked the driver whether we were drinking. I called out that we were not drinking. Kosam told our driver to wind down the window. They were just talking in the car. He was angry with his friends because they did not listen to him. He was yelling at them. They were told to get out. They did. They got into the police vehicle.
59. He did not hear any police officer tell them that they were being arrested. Their driver Marlon was taken for breathalyser test. At the watch house, he was still very aggressive towards his friends. He was asked:
Q- Did you swear at them?
Ans- Yes, a lot. I kept telling Marlon that he should be the one arrested (the driver) and not the passengers.
60. Anthony put all of them in one cell. When asked-Q- what happened?
Ans- I was still being aggressive towards my friends. Swearing at them because we were being locked up.
61. Anthony came and told him that he'll be moved to another cell. Anthony pulled his shirt and they had a scuffle. He started swearing at Anthony. Anthony pulled him towards the next cell.
Q- what else did you do at initial cell?
*Ans- He pulled me out. **I flung my fists at him.** He threw me on the floor. He twisted my arms behind me. Anthony left him. He kept swearing at Anthony with his mother. In the morning, they took me back to the cell with my friends. My friends were all released. He was further detained, brought to court and taken to prison.*

Cross Examination

- Q- started drinking at your place at around 11-12pm?*
Ans-Yes- drank from 11-5pm.
- Q- 5-6 hours of drinking?*
Ans- Yes, drank half a case of Pure Blonde. All of them were drinking.
- Q- you wanted to avoid police because you were drunk?*
Ans- Yes
- Q- also drinking in the car?*
Ans- I don't know. Myself, I did not want to meet police.
- Q- because you had drinks in the car?*
Ans- Yes
- Q- As shown in the photos?*

Ans- Yes

Q- At Aiwo junction, you detoured behind Civic?

Ans- Yes, when we were spotted by Kosam. He stopped us.

Q- Kosam spoke to driver? You heard him? Told driver to put your window down?

Ans- All- Yes.

Q- He said you looked drunk?

Ans- Yes

Q- You had slurred speech because you were drunk?

Ans- Yes

Q- He noticed driver and passengers drunk?

Ans- Not overly drunk.

Q- you were still cursing your friends for going the wrong way?

Ans- Yes

Q- Truman attended to you, he suspected you were drunk and arrested you?

Ans- That's right.

Q- You willingly got out of the vehicle because he placed you under arrest?

Ans- Yes but he never said he was arresting us.

Q- He suspected you were drinking, he placed you under arrest?

Ans- Yes, maybe right- but he never mentioned anything about being arrested.

Q- at the police station, you were placed in one cell and you were still very angry?

Ans- Yes, swearing at my friends from when we left our place till the police station.

Q- Because you were swearing, were you surprised that you were going to be removed?

Ans- Yes- didn't know that it was normal to separate us

Q- You were not targeted but to take to take you to another cell to calm the situation?

Ans- I don't think they should remove me.

Q- you didn't want to leave the cell?

Ans- It's okay for me to stay- why they come to take me away?

Q- Angry with the police?

Ans- Yes- they disrupted our conversation

Q- because you were upset?

Ans- Yes

Q- Nordoff came in to get you?

Ans- No

Valentine never entered the cell?

Ans- I remember – don't know Nordoff, Valentine(Anthony) came into the cell

Q- in the new cell, very angry?

Ans- Yes, because he broke up our company- not right to take me away from my friends

Q- so upset you punched Anthony?

Ans- It was at the first cell that I hit him with my fist

Q- at the second cell, you didn't realise another police officer there?

Ans- Yes, I was aware of a police officer there

Q- Nordoff outside 2nd cell was true?

Ans- Yes another police officer there

Q- Nordoff said what he saw, he would be true?

Ans- I won't know but other police there

Q- Anthony never expected the blow?

*Ans- **Punching him was not my intention to hurt him-but for him to release me***

Q- Vey upset with police that's why you punched Anthony?

*Ans- **My intention- not to punch to hurt him but for him to let go of me***

Q- You knew Anthony was a police officer?

Ans- Yes

Q- He had his uniform on that day?

*Ans- **Yes with vest also- same as in the photos***

Re- Examination

Q- when in the same cell, Anthony came into the cell?

*Ans- No, I remember Valentine(Anthony) at the door of the cell- **he didn't enter the cell***

Q- You were upset at being removed or way of removal?

Ans- Both and the way the y handled me

Q- That's when you struggled?

Yes, I was trying to get out of his hold

Q- second cell, you also had a struggle with Anthony?

Ans- Yes, struggled on two occasions

Q- did Truman tell you- about being arrested?

Ans- No

Q- you know it's illegal to take liquor in car?

Ans- Not illegal.

DW-2, Marlon Dongobir- driver of the red car.

62. Confirmed the swearing and yelling of the defendant, Craven.

Cross- Examination

Q- At Bina Rose, you stopped because you saw the police?

Ans- Yes. I stopped because I saw the police.

Q – You stopped because you'll be caught?

Ans- Yes

Q-Likely to be DUI?

Ans- Yes

Q- Worried about colleagues also drinking in the car?

*Ans- Yes [**Note- this is an admission of the passengers drinking in the car**]*

At Police cell, he lay face down. Feeling sad- didn't really notice others.

Fat officer with vest- Valentine came in and go out with Craven.

DW-3 Doubug Adire

63. Valentine(Anthony) came into the cell to remove the defendant. Craven was still swearing.

Q- why didn't Marlon see the scuffle in the cell?

Ans- maybe he was sleeping.

Q- wouldn't see what happened in the second cell?

Ans- Can't see.

POSSIBLE DEFENCES

64. The prosecution submitted that two possible defences that maybe relevant here.

'Intoxication'

65. Section 43 of the Act provides for this. It's not relevant here as the intoxication was self-induced.

'Self- Defence'

Section 51 of the Act provides for this. The relevant limb is Section 51(1)(2)(a)(i) and (b). It reads:

(1) A person is not criminally responsible for an offence if the person engages in the conduct constituting the offence in self-defence.

(2) A person engages in conduct in self-defence only, if:

(a) the person believes the conduct is necessary:

(i) to defend the person or another person

...

(b) the conduct is a reasonable response in the circumstances as the person perceives them'

66. The prosecution submits that "all the evidence in this trial, there was nothing available to the defendant to believe on reasonable grounds that it was necessary in self defence to do what he did to Anthony Dabwadau, that is yield a punch on his right cheek. The prosecution therefore has proven beyond reasonable doubt that the defendant was not acting under self-defence."

DISCUSSION

'Count 1: Drinking'

67. I refer to the direct admission by DW-2 Marlon under cross- examination. He was asked the following questions-

Q- At BinaRose, you stopped because you saw the police?

Ans- Yes.

Q- You stopped because you'll be caught?

Ans- Yes.

Q- Likely to be driving under the influence?

Ans- Yes

Q- Worried about colleagues also drinking in the car?

Ans- Yes

68. The above amounts to an admission by DW-2 that the passengers were drinking in the car. This supports the circumstantial evidence of opened beer cans, bottle of Vodka, slurred

speech of the defendants, his yelling, swearing and aggressive behaviour that the defendant had consumed alcohol whilst travelling in the red car as a passenger.

Was the arrest of the defendant lawful?

69. The defendant and defence witnesses all state that they were not arrested when told to get off the red car. They had all been drinking for about 5-6 hours. There is sufficient evidence of their slurred speech, the defendant appearing not to be aware of his surroundings.

70. The police officers were sober. PW-1 police officer Tuman Gioura was forthright in his evidence.

He told the driver to wind down their windows. He smelt strong smell of alcohol. Four people inside. He recognised two of them. Behind the driver was 'Craven' – the defendant.

He told the driver to get out. The driver did. He told him his rights as he was going to be arrested for DUI. The other three were non-complaint, especially the accused, Craven who was aggressively argumentative and talking back to me.

71. I have considered the arrest powers of the police under section 270 of the Act, section 24 of the Nauru Police Force Act 1972 and section 114 of the Motor Traffic Act 2014. I am satisfied that police officer Truman lawfully arrested the defendant on the day in question.

72. I am further satisfied beyond reasonable doubt that the defendant committed the offence as charged under Count 1.

73. I find the defendant Craven Detabene guilty as charged on Count 1.

'Count 2: Causing Harm to Police Officer'

74. PW-6, police officer Anthony Dabwadauw clearly stated in his evidence that it was PW-3 Nordoff Detageouwa that removed the defendant from the first cell they were in. PW-3 Nordoff confirms his evidence. PW-6, Anthony then put the defendant in the third cell. As he turned to close the cell door, the defendant then punched him on his head and face. PW-3 also confirms his version of the events. In his evidence, PW-3 police officer Nordoff said:

"Craven punched Anthony. The punches landed on Anthony's head/face. It happened right in front of him."

75. In his evidence, the defendant, Craven said that he was angry with the police. He did not want to be removed from the cell where his friends were. He kept swearing at his friends. In his words- 'the police disrupted their conversation.' He was asked:

Q- 'in the new cell, very angry?'

Ans- Yes, because he broke up our company- not right to take me away from my friends

76. When further questioned, the defendant said:

Q- 'Anthony never expected the blow?'

Ans- Punching him was not my intention to hurt him-but for him to release me

Q- Vey upset with police that's why you punched Anthony?

Ans- My intention- not to punch to hurt him but for him to let go of me

Q- You knew Anthony was a police officer?

Ans- Yes

Q- He had his uniform on that day?

Ans- Yes with vest also- same as in the photos.

77. PW-6 police officer Anthony suffered harm as evidenced by his own testimony and that of PW-4 Dr Yee Yee Wynn. There is also sufficient evidence that PW-6 police officer Anthony did not consent to being assaulted. The defendant intended to cause him harm. The defendant, in his own evidence knew that PW-6 was a police officer.
78. Having considered all the evidence, it is clear that the defendant was very angry for being arrested. He was cursing his friends. In his words, he was cursing them from the point of their arrest and whilst they were in the cell.
79. The defendant did not like being removed to another cell. He was angry still. He did not want the police to 'break up their conversation.' He knew that PW6 Anthony was a police officer.
80. The defendant admitted punching police officer Anthony. In his words, he did not want to hurt Anthony. He wanted Anthony to release him. Police officer Anthony stated clearly that the defendant turned and punched him. PW-3 police officer Nordoff confirms this. In his words, 'Craven punched Anthony. The punches landed on Anthony's head. It happened right in front of me.'

Possible Defences

'Intoxication'

81. I have considered section 43 of the Act on the defence of intoxication. I opine that this defence does not apply here as the 'intoxication' was self - induced.

Self Defence

82. Mr Clodumar has submitted that the defendant acted in self-defence when he punched police officer Anthony. He correctly submits that its for the prosecution to prove beyond reasonable doubt that it does not apply in this case.
83. The defendant said that he punched police officer Anthony not to hurt him but for Anthony to release him. Madam DPP has referred the Court to *Palmer v The Queen [1971] AC 814*, where Lord Morris of Borthy Gest said:

"It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do but may only do, what is reasonably necessary. But everything will depend on the particular facts and circumstances...It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is

relatively some minor attack it would not be common sense to permit some action of retaliation which was wholly out of proportion to the necessities of the situation...”

84. His Lordship added:

“If there has been an attack so that defence is reasonably necessary it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his defensive action. If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary that would be most potent evidence that only reasonable defensive action had been taken... the defence of self-defence, where reasonable makes its raising possible, will only fail if the prosecution show beyond reasonable doubt that what the accused did was not by way of self-defence... The defence of self-defence succeeds so as to result in an acquittal or it is disproved in which case as a defence it is rejected.”

85. In *Zecevic v DPP (Vic)* (1987) 162 CLR 645; Wilson, Dawson and Toohey JJ said (at 661):

*“The question to be asked in the end is quite simple. **It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did.** If he had that belief and there were reasonable grounds for it, or if the jury is left in reasonable doubt about the matter, then he is entitled to an acquittal. Stated in that form, **the question is one of general application and is not limited to homicide.**”*

86. In *State v Li Jun*, CAV0017 of 2007, the court said:

“the test in Zecevic is not wholly objective. It is the belief of the accused, based on the circumstances as he or she perceives them to be, which has to be reasonable. The test is not what a reasonable person in the accused’s position would have believed: R v Conlon (1939) 69 A Crim R 92, 99, per Hunt CJ at CL; R v Hawes (1994) 35 NSWLR 294, 305, per Hunt CJ at CL, with whom Simpson and Bruce JJ agreed. It follows that where self-defence is an issue, account must be taken of the personal characteristics of the accused which might affect his appreciation of the gravity of the threat which he faced and as to the reasonableness of his or her response to the threat: R v Conlon, 99.”

87. I remind myself of the burden as detailed in- *Zecevic v DPP (Vic)* (1987) 162 CLR 645; Wilson, Dawson and Toohey JJ said) at 657):

*“Although self-defence is still commonly referred to as a defence, **the ultimate onus of proof with respect to self-defence does not rest on the accused.** Since *Woolmington v Director of Public Prosecutions* [1935] AC 462, it has been clearly established that once the evidence discloses the possibility that the fatal act was done in self-defence, **a burden falls on the prosecution to disprove that fact, that is to say, to prove beyond reasonable doubt that the fatal act was not done in self-defence.** The jury must be instructed whether or not the plea is actually raised by the accused: *Director of Public Prosecutions v Walker* [1974] 1 WLR 1090 at 1094.”*

88. I note the observations of Brennan J in Zecevic v DPP case above where he said-“*Self-defence is not a charter to kill or assault those who are under a duty or who have a right to apply force to the accused.*”

89. He added- “*It follows that the defence of self-defence is not available when the force against which the accused defends himself is lawfully applied.*”

90. In Viro v. The Queen (1978) 141 CLR 88, Gibbs J observed:

"It is obvious enough that a person cannot rely upon the plea of self-defence unless the violence against which he sought to defend himself was unlawful."

91. In this case, the defendant had been cursing, yelling and swearing as he was angry. He said it was targeted at his friends and he started doing this since they got arrested at the road behind Civic. He continued his cursing, yelling and swearing within the cells at the Police Station.

92. Sergeant Luke instructed PW-3 Nordoff and PW- 6 Anthony to remove the defendant from the cell he was in and to put him in another. The defendant was angry. He did not like being removed from his friends. He said that PW-6 police officer Anthony yanked him up. The defendant punched Anthony so as to release himself.

93. PW- 6 Anthony said that the defendant punched him. This was witnessed by PW-3 Nordoff. I listened carefully to the accounts given in court and observed closely the demeanours of all the witnesses. I believe the testimonies of the prosecution witnesses.

94. PW-3 Nordoff and PW-6 Anthony acted lawfully in taking the defendant to another cell. **It was not an unlawful act where the defence of self- defence may be raised.**

95. I am satisfied beyond reasonable doubt that all the elements of Count 2 have been satisfied.

CONCLUSION

96. I therefore find the defendant guilty as charged on both Counts 1 and 2.

Dated this 26 day of April 2024.


Kiniviliame T Keteca
Judge

