



IN THE DISTRICT COURT OF NAURU
CRIMINAL JURISDICTION

Criminal Case No. 38/2020

THE REPUBLIC

-v-

LOCKLEY DENUGA

Before: RM Penijamini R. Lomaloma
Republic: Ms. Filimoni Lacanivalu, Ms. Susan Serukai & Mr. Saif Shah
Defendant: Mr. Dimenski Reweru & Vinci Clodumar
Date of Hearing: 25-26 November 2020, 23 February 2021, 25 May 2021
Date of Judgment: 13th August 2021

JUDGMENT

Catchwords: *Causing harm to a police officer contrary to section 77 of the Crimes Act 2016. Arrest without warrant – must show reasonable cause to suspect an offence has been committed; reasons for arrest to be made known to accused; Intention for the conduct – governed by section 17(1) of the Crimes Act; Intention to cause harm is a result and section 17(3) of the Crimes Act applies to it – the person means to bring about the result or is aware that it will occur in the ordinary course of events.*

Introduction

1. The defendant stands charged with the following offences: -

COUNT 1

Statement of Offence

Obstructing a public official: Contrary to section 242 (a) and (b) of the Crimes Act 2016.

Particulars of Offence

Lockley Denuga on the 7th day of July 2020 at Nauru, resisted Bugia Bill in the exercise of his functions as a public official and Lockley Denuga believed Bugia Bill is a public official

COUNT 2

Statement of Offence

Causing harm to a police officer: Contrary to section 77 (a)(b)(c)(d) and (i) of the Crimes Act 2016.

Particulars of Offence

Lockley Denuga on the 7th of July 2020 at Nauru, intentionally engaged in conduct, namely punching the facial area of Bugia Bill resulting in harm to Bugia Bill without his consent and Lockley Denuga intended to cause harm to Bugia Bill because

Lockley Denuga believed Bugia Bill was a police officer and Bugia Bill was in fact a police officer.

2. The trial started on 25-26 November 2020 and was adjourned to 2-3 February 2021 as Mr. Lacanivalu and I had to take our holidays in Fiji during the Covid-19 restrictions. Mr. Lacanivalu did not return and so the prosecution was taken over by Ms. Serukai. Ms Serukai returned to Fiji without completing the trial. Meanwhile, Mr. Vinci Clodumar, lead counsel for the defence, had to go to the Republic of China, Taiwan in about April 2021 and is still not back. Multiple adjournments had to be made in the last minute either because of staff shortages within the DPP or counsel being forced to seek a vacation because of commitments in the Supreme Court made after our trial dates were set.
3. Mr. Saif Shah completed the prosecution on 25th May 2021 and because of the many adjournments and changes to counsel, it was difficult for the prosecutor and defence counsel to prepare their submissions
4. The prosecution called 6 witnesses:
 - a) Constable Bugia Bill;
 - b) Constable Joshua Batiku;
 - c) Dr. Alali Alali;
 - d) PC Anton Iga;
 - e) PC Tylon Benjamin; and
 - f) Police Reserve John Tsiode.
5. At the end of the prosecution case, I found that there was a case to answer and I put the defendant to his defence. He elected to give sworn evidence and called his son, Sherlock Denuga to testify on his behalf.

Background

6. On the night of 7th July 2020, a police patrol attended a report of a domestic fight in Lockley Denuga's residence in Uaboe District. When police arrived, the accused was drunk and standing outside his house being restrained by his adult son, Sherlock Denuga. PC Bugia Bill approached Sherlock and after discussions, they agreed that the accused should be taken from the scene by police to the station to be locked up. PC Bugia went to the accused and told him that he was taking him to the station which he later explained meant that he was arresting the accused. The accused went willingly but he challenged the police to a fight at the rear of the police vehicle and became aggressive. In the altercation that followed, the accused punched Bugia Bill on his nose and caused injuries to it.
7. The prosecution evidence and that of DW2, Sherlock Denuga are consistent. The only difference is that PW1, PC Bugia Bill did not agree with the others that the accused did not resist between the time of arrest in front of his house to the police vehicle. The accused also agrees with the evidence of the remainder of the witnesses about what happened but he could not remember the facts where they concern the two charges against him.
8. The defence case is that the arrest is illegal as the police did not give the accused the reasons for his arrest contrary to the requirements of Article 5(2) of the Constitution.
9. The defendant also relied on the defence of intoxication — that the accused was so drunk he could not remember what happened so he was insane and could not form the intention required.

The Law

10. Section 242 of the Crimes Act 2016 states: -
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.
11. Section 77 (a)(b)(c)(d) and (i) of the Crimes Act 2016 provides:-
77 Causing harm to police officer
A person commits an offence if:
(a) *the person intentionally engages in conduct; and*
(b) *the conduct causes harm to another person without the person's consent; and*
(c) *the person intends to cause harm to the other person because the person believes the other person is a police officer; and*
(d) *the other person is in fact a police officer.*
Penalty:
(i) *if aggravating circumstances apply—10 years imprisonment.*
12. Section 8 of the Crimes Act 2016, defines 'conduct' as "*an act, an omission to do an act, or a state of affairs, and includes a series of acts, or omissions to do acts.*" **Engage in conduct is defined** as: -
(a) *do an act; or*
(b) *omit to do an act; or*
(c) *be in a state of affairs*
13. Harm is defined in section 8 of the Crimes Act 2016 as:
'harm' *means physical harm and mental harm. 'Mental harm' includes psychological harm (whether temporary or permanent) but does not include an emotional reaction such as distress, grief, fear or anger unless the reaction results in psychological harm.*
14. Physical harm is defined as: -
(a) *includes any of the following (whether temporary or permanent):*
(i) *unconsciousness;*
(ii) *pain;*
(iii) *disfigurement;*
(iv) *infection with a disease;*
(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 interaction or to life in the community.*

Burden of proof

15. The burden of proof lies on the prosecution to prove each element of the offence beyond reasonable doubt.

THE PROSECUTION EVIDENCE

16. Four police officers testified that they went on the night of 7th July 2020 to attend a report of a fight at the residence of the accused at Uaboe District. Some of the officers said it

was a domestic dispute. Their evidence does not vary very much on the elements of the offence and so I will summarize their evidence.

17. **Prosecution Witness 1 (PW1) Police Constable Bugia Bill** said that he was in police uniform and he travelled with the other police officers who were ordered by their superior officer at the police station to attend the report in NPF 115, a clearly marked police vehicle. It is a Toyota Hilux double cab vehicle with a *can cage* at the back tray where aggressive or violent people are locked up to take them to the police station. There was no doubt therefore that Bugia Bill was a police officer carrying out his duties as a police officer.
18. PW1 said:-
When I got off the vehicle, his son was holding on to him and he was struggling with him. His son is Sherlock. His son was holding onto him and he was resisting his son. His son had one hand on his shirt at the back and one hand on his arm. The accused was not doing anything else. I went up to him and told him I'll take his father and lock him up. He was still struggling when I took him to the vehicle. Sherlock did not do anything. I just took his father. I told Lockley that I am taking him and putting him in the cell. I just told him to rest. He was still struggling when I took him to the vehicle. He was resisting. I kept holding him. I was holding onto his forearm with one hand and the other on his back (at shoulder level). I put him in the vehicle and he kept punching me in the face. I put him in the cage. He punched me 3 times. His last punch caused injuries to my face—my nose. I did not consent for him to punch me. When my nose got hurt, I pulled out and my colleagues took over.
19. In cross-examination, PW1 said when he approached the accused, "I told him we will be taking him to the cell. I told him that we will take him to have a rest inside." PW1 re-affirmed that the accused was struggling as he was taken to the police vehicle. PW1 said the accused smelled of alcohol; and that the purpose for taking the accused was to let him sober up in the cell. PW1 said the patrol went to attend because there was a report of fighting at the accused's residence; and that the words "to take him to the station" meant he was under arrest.

Prosecution witness 2 (PW2) – Constable Joshua Batiku

20. PC Batiku was the investigating officer. He said the report that they got was that the accused was drunk and was attacking his wife Agnes. The report was made by the accused's son, Sherlock Denuga. PW2 said Agnes Denuga and Sherlock Denuga refused to give him a statement. He interviewed the accused after giving him his right to remain silent. The record of the interview was tendered but the accused made no admissions in it.

Dr. Alali Alali (PW3)

21. Dr. Alali, having been qualified and accepted as an expert by the Court, said he examined PW1 who was bleeding from the nose. Dr. Alali said that PW1 had a tear of the nasal septum, and a misalignment of the nasal bridge tendon causing pain and tenderness. In his opinion, the injuries were due to trauma via the use of external force. An x-ray taken did not reveal any fractures.

22. In cross-examination, Dr. Alali said he could not comment on whether the injuries were caused by the massage but he said in re-exam that a great deal of force would have been necessary to cause a misalignment of the nasal bridge.

PW4—Police Constable Anton Iga

23. PW4 said he was in the patrol that attended the report at the accused's residence. PW4 said the report was a domestic case; that the accused was drunk and violent and abusing his wife; that when they reached the accused's residence, **the accused was outside screaming, yelling and his son Sherlock was holding onto him.** Constable Bugia then approached the accused and told him they were taking him to the station; that Constable Bugia was holding onto the accused's upper back with one hand and holding onto his wrist with the other; and that he was about 2 steps behind them. He went to open the cage at the back of the police vehicle. He continued:

Bugia and Pupson were holding onto him as he was very agitated. We arrested him and he also challenged us when we arrested him. He was agitated and behaving badly because he was drunk—I could see it as I approached him in the beginning and he was smelling of alcohol. When he was challenging us he said, **"Before you lock me up, I want to face the Police before I get locked up."**

24. PW4 said Pupson got into the vehicle so he could pull the accused in and that was when he punched Bugia.
25. In cross-examination, PW4 said that the accused punched Constable Bugia Bill. He affirmed that the accused complied with instructions on the way to the vehicle but became agitated when Bugia and Pupson put their hands on him; that the accused then challenged them to a fight; and he punched Bugia Bill when he put his hand on the accused to put him in the vehicle.

(PW5)—Police Constable Tylon Benjamin.

26. He said when they got to the accused's residence, the accused was being held by his son. He followed PC Bugia Bill and heard the son talk to PC Bugia. He heard Bugia say to the accused, "We will take you." PW5 said that Bugia took the accused to the police car and the old man was moving around like he did not want to go to the police vehicle. Pupson then came and helped Bugia and he heard the accused challenge the police to a fight by saying, "You wait, you think you are tough?" He did not actually see the punch that hit Bugia as he had gone to the front of the vehicle. He did see Bugia walking past him to get in the vehicle with a bleeding nose. In cross-examination, he said that Pupson came to help Bugia when the accused started to move around on the way to the police vehicle.

PW6 Police Reserve John Tsiode

27. He said when they got to the accused's residence, he saw Bugia go and talk to Sherlock, the accused's son. "Sherlock was holding on to his father and Bugia told Sherlock, "We will take it from here." In cross, he said the accused was compliant on the way to the back of the vehicle. PW6 said he was very close to the rear and side of the vehicle with his hand on the vehicle. Bugia told the accused as he was boarding the vehicle that they will lock him up. The accused then said in Nauruan, "If you are going to lock me up, we have a fist fight first." The accused then punched Bugia Bill on the nose.
28. At the end of the prosecution case, I found that the accused had a case to answer on both count and I put him to his defence.

Defence Evidence

29. The accused elected to give evidence on oath and he called his son to give evidence on his behalf.
30. The accused is 64 years old and married. On 7th July, he said he went to Bay Restaurant to have dinner and drinks to farewell a friend leaving. He was later joined by his wife. He put \$100 and his friend did the same to buy beers. He got there at about 6 pm and the Bay closes at 10:00 pm. He became agitated and angry when his wife told him the money for the drinks was finished. He was not satisfied with the explanation that his wife gave him for how the money was spent. His wife drove him home. He does not recall what time it was. He kept on asking his wife about how the \$200 went so quickly and he was not satisfied with her explanation and so he got more irritated. He started raising his voice querying the same thing again. He continued: -
- “I can’t remember but somewhere in between, I’m fighting my son-in-law outside my place. That’s where these things started to happen. I seem to have blacked out sometimes and I saw many people there. Sherlock was holding me back while I was fighting this other boy. Later I saw the police in my driveway and I called out to them, “Have you come to pick me up?” So I started walking towards it. They were still in the car when I started to walk towards it. When I reached them, two of them came beside me then. The back cage door was open but it was being blocked by a rock in my way. The police were still standing beside me and I started climbing into the back of the car. My memory lapsed again and next thing I remember, I was fighting them. My next memory, I was sitting in the car—one woman police constable on my left and one male policeman in front of me. I don’t remember challenging them to a fight.”
31. In cross-examination, the accused said he can’t remember what time he started drinking, what time he stopped, how many beers he drank but he did recall that it was VB and that he drank a lot of it. He repeated what he said about the arguments with his wife and said: -
- “I was raising my voice, I was hitting my wife so they came out and got me more angry. I was pushed around and I ended up fighting them—it was a fist fight. Can’t recall how long the fight lasted. After a while I saw my son there. He was holding me. My son was holding me to stop me fighting more of the boys. I was also fighting the neighbours—4 of them were there.”
32. He was asked the following:
- Put: When you reached the police vehicle, you challenged the police to a fight.*
- A: “I don’t recall. I must have relapsed.*
- Put: You then punched police officer Bill 3 times?*
- A: I don’t recall but I do remember fighting them, I don’t know why.*
- Put: You were angry?*
- A: I can’t recall but I was fighting them.*
- Put: The police officers you were fighting were Bill and Anton?*
- A: It was dark, my eyesight is not good. Do not know the young boys there. By fighting, I mean pushing and fist fighting and things like that.*

Defence Witness 2 (DW2)—Sherlock Denuga.

33. He is the 32-year old son of the accused. He said he received a phone call from one of the locals and later his mum to go and see his Dad because he was drunk and they

were arguing. He went to where they lived. When he arrived he saw his brother in law holding the accused and trying to calm him. His mum told him to take the accused away as they had argued. He said, "My father was yelling and being aggressive as he was drunk so I had to hold him and try to calm him. I don't know his intentions."

34. His mother left and police arrived. He continued: -

"When police arrived, I asked them if they can take our father in. My father agreed and went with them. The police parked right beside our neighbors house and walked towards us where we were standing. I remember the police saying, "We're here to take him in, they were asking what was happening and asking if they have to take him in. I was the one who called police on my way to Uaboe. They were asking us what we want to do with him. I asked my Dad if he wanted to go with the police and he agreed. He turned around and walked towards the police vehicle. I saw 2 police officers walking beside him—left and right side. I can't remember if he was in front. No resistance when he was walking away. He was walking by himself, two police officers beside him. Not holding him. He was a bit drunk but calm. He was calm but wobbling when he was walking towards the police vehicle.

35. DW2 said at this stage he turned away to speak to his sisters but he heard his father yelling from the police vehicle but he told his siblings to let the police handle the matter.

36. In cross-examination, this witness stuck to his evidence in chief. He said he asked his mother to go to his place as they might continue to argue with his father if she didn't.

ANALYSIS

First Count: Obstructing a public official.

37. The elements of the offence which the prosecution have to prove beyond reasonable doubt are that:

- a) the accused;
- b) resisted (PC Bugia Bill);
- c) The accused intended to resist PC Bugia Bill¹;
- d) in the exercise of his duty as a public official (police officer);
- e) PC Bugia Bill was carrying out a legal duty; and
- f) the accused knew that PC Bugia Bill is a police officer.

38. A "public official" is defined in section 8 of the Crimes Act as "*an official having public official functions or acting in a public official capacity for the Republic and includes the following:(e) a police officer.*

39. PC Bugia Bill and the other police officers with him were on duty and in police uniform. They went to the scene in a police vehicle clearly marked as a police vehicle. They were attending at the request of DW2, the accused's son that his father was yelling and being aggressive as he was drunk. PC Bugia Bill said he took the accused by the arm and told him he was taking him to the station to get some rest. He said in cross-examination that his words meant that he was putting him under arrest.

¹ 22 Offences that do not provide fault elements (1) If 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

40. I find that the prosecution have proved beyond reasonable doubt that the accused knew that PC Bugia Bill was a police officer.

Issue: Did Lockley Denuga commit an arrestable offence?

41. The official duty that PC Bugia Bill was performing for the purposes of count 1 was arresting the accused. An arrest can only be an official duty if it was a lawful arrest². To determine that, we need to look at section 270 of the Crimes Act 2016. The section states:

270 Arrest without warrant—police

(1) A police officer may arrest a person without warrant if the police officer:

(a) suspects, on reasonable grounds, that the person has committed, is committing or is about to commit an offence against this Act; and

(b) considers that the arrest is reasonably necessary.

(2) For subsection (1)(b), an arrest may be considered reasonably necessary for 1 or more of the following reasons:

(a) because the police officer reasonably suspects the offence is punishable by imprisonment for more than 5 years;

(b) to stop the person committing, or repeating, the offence or another offence;

(c) to inquire into the person's identity if their identity cannot be established or the police officer believes on reasonable grounds that identity information given is false;

(d) to ensure the person appears before a court;

(e) to obtain evidence relating to the offence;

(f) to prevent the loss, concealment, destruction or fabrication of evidence relating to the offence;

(g) to protect the safety or welfare of any person;

(h) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence;

(i) to prevent the suspect from fleeing from the police or the location of an offence

42. PC Bugia Bill is the arresting officer but unfortunately he was not specifically asked in examination what offence he suspected the accused of having committed that led him to arrest him without a warrant as required by section 270(1) of the Crimes Act 2016

43. PW4 Police Constable Anton Iga said the report that they got was that the accused was drunk and violent and abusing his wife and when they got there, the accused "was outside screaming, yelling and his son Sherlock was holding onto him." If we put the report together with what the officers saw and heard and smelled when they got to the scene, there can be several reasons for believing that it was reasonably necessary to arrest the accused such as those in subsections 270 (2) (b)(e)(g) or (i) highlighted above.

Issue: When was the arrest made?

44. Section 11 of the Criminal Procedure Act states how an arrest is to be made: -

11 Mode of making arrest

(1) In making an arrest the person making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

...

² Republic v Agege [2021] NRSC 29; Criminal Case 20 of 2020 (3 August 2021) para

45. PC Bugia Bill had put his hands firmly on the accused and told him he was taking him to the station and by that he meant that the accused was under arrest. The arrest was made at that point.

Issue: Was the accused given the reasons for his arrest?

46. Article 5 (2) of the Constitution requires that an accused person shall be informed promptly of the reasons for the arrest or detention. This right has long been protected by the English common law. The leading case is the decision of the House of Lords in 1947 in the case of *Christie v. Leachinsky*³. It is part of the common law of Nauru pursuant to section 4 of the Customs and Adopted Laws Act 1971. It is binding on this Court.

Viscount Simon, after examining the authorities, said that the following propositions are established: -

1. *If a policeman arrests without warrant on reasonable suspicion of felony, or of other crime of the sort which does not require a warrant, he must **in ordinary circumstances** inform the person arrested of the true ground of the arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or suspicion of what crime he is seized.*

2. *If the citizen is not so informed, but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment;*

3. *The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained;*

4. *The requirement that he should be so informed does not mean the technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country, a person is prima facie, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.*

5. *The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him.*

(emphasis mine)

47. Immediately prior to the oft-quoted summary above, Viscount Simon referred to the following case which he said was good law⁴: -

*In Rex v Howarth (1823)*⁵, it is laid down that there is no need to tell a man why he is being arrested when he must, in the circumstances of the arrest, know the reason already.

48. The accused said in his own evidence that "I was raising my voice, I was hitting my wife so they came out and got me more angry. I was pushed around and I ended up fighting them—it was a fist fight. Can't recall how long the fight lasted." The accused said he fought with his son-in-law and 4 other young man. When the police came he was still being restrained by his son. When he arrived, PC Bugia Bill discussed the situation with the accused's son who asked them to take his father away. The accused agreed to go

³ [1947] A.C. 573; [1947] 1 All ER 567

⁴ Ibid at 572

⁵ 1 Mood. C.c. 207; 14 Digest 313, 3288

with them to the station. There was therefore no need to tell him why he was going to the station. The reason why a man is to be told why he is being arrested was explained clearly in *Christie v Leachinsky* by Lord Du Parc⁶ after tracing the history of the law:-

The principles established by the authorities are agreeable to common sense, and follow from the governing rule of the common law that a man is entitled to his liberty and may, if necessary, defend his own freedom by force. If another person has a lawful reason for seeking to deprive him of that liberty, that person must, as a general rule tell him what the reason is, for, unless he is told, he cannot be expected to submit to arrest or be blamed for resistance.

49. In the circumstances pertaining before and at the arrest, I find that there was no need to tell the accused why he was being arrested.
50. I therefore find that the arrest of the accused by PC Bugia Bill was legal.

Issue: Did the accused resist the arrest?

51. The arrest is a continuing action. It starts when the accused is put under arrest and ceases only when the accused is either released on bail or because the police decide not to prefer charges or taken to a court. The accused did not resist the arrest until he got to the vehicle. There he changed his mind and challenged the police to a fight and would not get in the vehicle until he had his fight. That was resistance.

Conclusions on Count 1

52. I find for the reasons given that the prosecution has proved beyond reasonable doubt the elements of count 1 except the intention which I will deal with in my analysis of count 2. Count 1 does not have a fault element in the definition of the offence. Section 22 of the Crimes Act 2016 provides this:-

22 Offences that do not provide fault elements

(1) If 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

Count 2—Causing harm to a police officer contrary to section 77(a)(b)(c)(d)(i) of the Crimes Act 2016

53. The elements of this offence are:

- a) the accused;
- b) intentionally engaged in conduct;
- c) the conduct caused harm to PC Bugia Bill without his consent;
- d) the accused intended to cause harm to PC Bugia Bill because he believed that Bugia Bill was a police officer; and
- e) Bugia Bill was in fact a police officer.

54. The evidence of PW1 and PW4 is that the accused punched PC Bugia Bill and PW3 Dr. Alali Alali is that it caused injuries. I accept their evidence. The accused does not remember anything about challenging or punching PC Bill. I accept the evidence of PW4 who heard the accused say, "Before you lock me up, I want to face the Police before I get locked up." Clearly, the accused knew that PC Bugia was a police officer, and he challenged the police officers to a fight and punched PC Bugia 3 times in the face and caused harm to the officer.

⁶ [1947] A.C. 573; [1947] 1 All ER 567 at 578.

Issue: Did the accused intend to engage in the conduct?

55. Section 17 of the Crimes Act deals with intention:

17 Intention

(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.

56. The conduct that the accused was involved in was to challenge the police to a fight and then actually punched PC Bugia 3 times.

Defence submission— The accused could not remember what he was doing and was therefore insane.

57. The defence argues that the accused could not remember what happened there because he was insane at the particular time and that therefore he could not form the intention.

58. I must disagree. In *AG's Reference (No. 2 of 1992)*⁷ Lord Taylor of Gosforth CJ delivered the judgment of the English Court of Criminal Appeal on a case where automatism in a driving situation was considered by the Court. His Lordship referred to *Broome v Perkins* [1987] RTR 321 where it was said:

If during a part or parts of the journey they were satisfied that his actions were voluntary and not automatic, at those times he was driving.... When driving a motor vehicle, the driver's conscious mind receives signals from eyes and ears, decides on the appropriate course of action as a result of those signals and gives directions to the limbs to control the vehicle. When a person's actions are involuntary and automatic his mind is not controlling or directing his limbs.

59. The issue is, "did he have the intention to do the act at the time he challenged the police and punched PC Bugia, not whether he can remember now what he did then. People forget very often some acts they intended to do at the time they acted. The evidence shows a conscious mind at work—he recognized the people in front of him as policemen, he realized that they were taking him to the station, he challenged them to a fight before they got there, he then punched PC Bugia at least 3 times. The action of punching three times requires complex instructions to be sent from his brain to his muscles, to receive feedback from the muscles and from his eyes, to aim his punches etc. This is not automatism. There was a conscious mind at work directing and coordinating his actions.

60. The defence also relied on the defence of intoxication in section 43 of the Crimes Act 2016 which states:

43 Intoxication

(1) A person is not criminally responsible for an offence if the person's conduct constituting the offence was as a result of intoxication that was not self-induced.

(2) Evidence of self-induced intoxication cannot be considered in deciding whether a fault element of intention existed for a physical element that consists only of conduct.

(3) This section does not prevent evidence of self-induced intoxication being considered in deciding whether conduct is voluntary.

(4) In this section:

⁷ [1993]4 All ER 683

....

'intoxication' means intoxication because of the influence of alcohol, a drug or another substance.

'self-induced': intoxication is 'self-induced' unless it came about(a) involuntarily;

.... "

61. The evidence of the accused is that he and his friend drank VB beer worth about \$200 for several hours and this led to the arguments with his wife and eventually his arrest. This was self-induced and he cannot rely on this defence. The physical element of his conduct requires that he intended to do what he did. For that intention, the defence of intoxication is not allowed by s. 43(2) above.
62. The second intention in the offence, is that he intended to cause harm to Bugia Bill. That intention relates to a result and section 17 (3) of the Crimes Act states: -
17(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
63. I have found above that the accused was aware of what he was doing. He was intoxicated but not to the extent that he did not know what he was doing or that what he was doing was wrong. I can infer that a 64-year old man should have the experience and knowledge that if you punch a man in the face and connect, it will, in the ordinary cause of events cause harm to him.
64. I find, for the reasons given above that the accused intentionally engaged in conduct and the conduct caused harm to PC Bugia Bill. Bugia Bill said he did not consent to the punch or to the injuries.

Verdict on Counts 2 & 1

65. From the discussion above, I find that the prosecution have proved beyond reasonable doubt all elements of count 2 and I find him guilty of it.
66. Further, I find that the accused intended to do what he did in count 1 and thus the prosecution has proved beyond reasonable doubt all elements of count 1 and I find him guilty of it also.

.....

Penijamini R. Lomaloma
Resident Magistrate