

In the District Court of Nauru Criminal Case No. 153 of 2013

Criminal Jurisdiction

Republic

V

Quincy Detenamo, Osni Scotty, Yoyo Reweru and Racky Depaune

Mr. Lacanivalu for the Republic

Mr. Ravunimase Tangivakatini for the defendants

*Date of hearing: 9th and 10th November 2015 and 22nd and 23rd
January 2016.*

Date of Submissions: 11 February 2016

Date of Judgment: 16 March 2016

Judgment

1. The defendant Quincy Detenamo is charged with 1 count of serious assault contrary to section 340 (2) of the Criminal Code 1899. Section 340(2) of the Criminal Code 1899 reads:

"Any person who...assaults, resists, or willfully obstructs, a police officer while acting in the execution of his duty, or any person in aid of a police officer while so acting;... is guilty of a misdemeanor, and is liable to imprisonment with hard labour for three years"¹

The particulars of the offence as charged against the defendant Mr. Quincy Detenamo reads:

"Quincy Detenamo on the 24 day of March 2013 at Nauru did willfully obstruct a police officer namely Sergeant Dinamo Appin whilst acting in the execution of his duty"²

2. In respect of this charge the prosecution called only one witness Sergeant Dinamo Appin, the complainant in this matter.

¹ Section 340(2) of the Criminal Code 1899

² Particulars of the offence charged as contained in the charge filed with the court on the 9 November 2011

3. Sergeant Appin gave evidence that on the 24 March 2013, he was the Sergeant in charge of the shift and was on duty at the police station when a call was received that there was a brawl or fight at Baitsi District. Sergeant Appin's evidence is that reports concerning brawls are treated as serious issues as opposed to minor ones. So when reports of brawls are received depending on the number of police officers available at work, several officers are often sent to attend to such reports. Upon receiving the report, Constable Dillion, Senior Constable Illona Dowedia, Sergeant Livana Spanner and he (Sergeant Appin) went to attend the report. He was driving at that time. He put on the beacon and siren and he was travelling to Baitsi at a speed of about 80 to 90 kilometers per hour. Sergeant Appin's evidence is that when they reached Uaboe District, he saw oncoming traffic on the other lane, he saw one car white in color driven by the defendant Quincy Detenamo, swerve to their lane and they almost collided with the vehicle head on and luckily he avoided it by driving onto the pavement. Sergeant Appin's evidence is that it took a few seconds when the vehicle driven by the defendant swerved back into the other lane. Sergeant Dinamo gave evidence that the defendant did not give any signals and that he saw the defendant Quincy Detenamo as he drove past. Sergeant Appin gave evidence that as they were approaching Baitsi, they were advised by Police radio control to turn off the siren and beacon because the complainant had advised radio control that those responsible for the brawl had already left in the white vehicle. It was then that he remembered the white vehicle driven by the defendant that almost collided with them, so they chased after the said vehicle. They caught up with the defendant, stopped the defendant and Sergeant Dinamo informed the defendant that he was going to arrest him for what he did and tried to get him out of the vehicle but not able to because the defendant held on tightly to the steering of the vehicle. And because the defendant's vehicle had been stopped in the middle of the road, Sergeant Appin told the defendant to leave the area and not to be seen in the area. He allowed the defendant to leave to avoid having to hold up the traffic. Sergeant Appin then went to pick Sergeant Jesse Adun and Constable so that they could go and arrest the defendant Quincy Detenamo.

4. The fact that the vehicle driven by the defendant Mr. Quincy Detenamo swerved into the lane in which Sergeant Appin was travelling on is not disputed. The fact that it took a few seconds for the defendant Quincy Detenamo to swerve the vehicle back into the lane in which he was travelling is not disputed. The first explanation given by the defendant after he was arrested and taken to the police station was that the vehicle he

was driving had a defective tyre. In examination in chief the defendant also explained that at that time he was arguing with his cousin who was sitting in the front seat, and when he heard the police siren and looked in front of him he realized that the vehicle had swerved into the other lane. He further explained that the defective tyre is such that if he does not control the steer it will swerve into the other lane. So whilst arguing with his cousin the vehicle swerved into the other lane and when he realized this he quickly steered the vehicle into his lane again.

5. There is no evidence to show that the defendant knew at that time that the police were travelling to Baitsi to arrest any of those with whom he was travelling. The defendant gave evidence that he heard that one of his cousins was involved in a brawl at Baitsi so he and the others went to take his said cousin away from causing further problems at Baitsi.

6. The defendant has given an explanation regarding the defect in the vehicle he was driving combined with his lack of due care and attention which had resulted in the vehicle he was driving veering into the opposite lane which the police were travelling in. The evidence and concession given by the defendant in his own evidence shows a clear case of dangerous and reckless driving on the part of the defendant.

7. On the evidence it is also clear that the defendant has also admitted to driving a motor vehicle with defective parts and driving a motor vehicle whilst under the influence of liquor. He has not been charged with any of these offences.

8. The issue for the court to determine on the evidence is whether at the time the defendant's vehicle veered into the other lane in which the police were travelling towards him in the opposite direction it was with the specific intention to obstruct the police in carrying out their duty to attend to the report of the brawl at Baitsi? The effect of the act of veering into the other lane is in the circumstances of this case an act capable of obstructing the police officer who was acting in the execution of his duty to attend to the report of the brawl at Baitsi. In *Willmott v Attack* [1977] QB498; [1976] 3 All ER 749 cited in *Carters Criminal Law of Queensland*³

"it was held that it was not sufficient for the prosecution to prove that the defendant done an act which had resulted

³ R.F. Carter. Criminal Law of Queensland Seventh Edition, Butterworths, Sydney 1988 at page 316

*in the obstruction of a police officer; what also had to be shown was that he had done the act with the intention of obstructing the officer in the sense of making it more difficult to carry out his duty."*⁴

9. There is no evidence before the court to show that the defendant went to Baitsi to pick his cousin who was involved in the brawl to avoid his said cousin from being arrested by police. His unchallenged evidence is that he went to Baitsi to pick his said cousin to prevent his said cousin from causing further problems in Baitsi.

8. Evidence of reckless and dangerous driving is not evidence of willfully obstructing a police officer in the execution of his duty. This is because there must be a specific intention to willfully obstruct the police in the execution of their duties. Also the defendant Quincy Detenamo did refuse to go out from the car when Sergeant Appin first tried to get him out after having informed him that he will be arrested for dangerous and careless driving. That refusal to go out from the car is evidence of willfully resisting arrest. Not willfully obstructing a police officer acting in execution of his duty.

9. I therefore find that the prosecution has not proved the charge of willfully obstructing a police officer in the execution of his duty against Quincy Detenamo beyond reasonable doubt. I find the defendant Quincy Detenamo not guilty of the charge of willfully obstructing a police officer in execution of his duty.

CHARGE AGAINST OSNI SCOTTY, YOYO REWERU AND RACKY DEPAUNE

10. The defendants Osni Scotty, Yoyo Reweru and Racky Depaune are charged with serious assault contrary to section 340(2) of the Criminal Code 1899. The particulars of the charge against the defendants are:

*"Osni Scotty, Yoyo Reweru and Racky Depaune on the 24 day of March 2013, at Nauru did willfully obstruct a police officer namely Senior. Jesse Adun whilst acting in the execution of his duty."*⁵

⁴ Refer to footnote 3 at page 316


⁵ Particulars of the offence as contained in the charge filed with the court on the 9 November 2016

9. On the evidence, there was sufficient evidence to show that the decision taken by Sergeant Dinamo Appin to proceed to arrest the defendant Quincy Detenamo was proper as there was sufficient evidence to show that he has committed offences in the presence of the police. The evidence is also clear that he has committed very serious offences the obvious one being that of dangerous and careless driving.

10. On the evidence it was clear that Sergeant Jesse Adun approached him and informed him of the fact that they were there to arrest him for what had happened earlier where his vehicle veered into the other lane and almost had a head on collision with the police vehicle being driven by Sergeant Dinamo Appin. The defendant Quincy Detenamo gave evidence that he was still discussing with the police that he had already been released earlier on by Sergeant Dinamo Appin and was told by Sergeant Appin that he did not want to see him anywhere on the road driving whilst he was drunk. This indicates that he is aware of the fact that the police were there to follow up on the earlier incident. I reject his evidence that he was not told of his arrest and why the police were there. The case for the defence is that the actions of Osni Scotty, Yoyo Reweru and Racky Depaune were because Mr. Quincy Detenamo was not informed of his arrest and the reason for his arrest. I reject this submission by the defense. There is no obligation on the police to inform persons whom they do not intend to arrest about another individuals arrest. The law only requires that the person intended to be arrested be informed of the arrest and the reason for his or her arrest. Mr. Quincy Detenamo has had sufficient notice of his impending arrest and the reason for that. Firstly by Sergeant Dinamo Appin and secondly by Sergeant Jesse Adun.

11. On the evidence, I find that the prosecution has proved its case against the defendant's Osni Scotty, Yoyo Reweru and Racky Depaune beyond reasonable. I find the defendant's Osni Scotty, Yoyo Reweru and Racky Depaune guilty of willfully obstructing police officers whilst acting in the execution of their duty.

Dated this 16 day of March 2016


Emma Garo
Resident Magistrate

