



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

Criminal Case No. 04 of 2023

BETWEEN: THE REPUBLIC
PROSECUTION

AND: MAYSWOOD TIMOTHY
1st ACCUSED
DAICOS GRUNDLER
2nd ACCUSED

BEFORE: Keteca J

Date of Submissions: 8/9th September 2025

Date of Ruling: 07th November 2025

Case may be cited as: Republic v Mayswood Timothy & Daicos Grundler

Catchwords: Application for No Case to Answer, Section 201, Criminal Procedure Act 1972

Appearances:

Counsel for the Prosecution: **Saif I. Shah**

Counsel for the Accused: **Shantel Hazelman**

RULING

BACKGROUND

1. The accused persons are charged with the following offences:

COUNT 1

Statement of Offence

CAUSING HARM TO A POLICE OFFICER: Contrary to Section 77(a)(b)(c) (ii) of the Crimes Act 2016. (the Act)

Particulars of Offence

Mayswood Timothy on the 24th of July 2022, at Meneng District in Nauru, intentionally engaged in conduct, that is, punched Constable Conway Detabene, and the conduct caused harm to Constable Conway Detabene without his consent and that Mayswood Timothy intended to cause harm to Constable Conway Detabene because Mayswood Timothy believed that Constable Conway Detabene is a police officer and that Constable Conway Detabene is in fact a police officer.

COUNT 2

Statement of Offence

ASSIST IN ESCAPE FROM LAWFUL CUSTODY: Contrary to Section 231(a)(ii) & (b) of the Crimes Act 2016.

Particulars of Offence

Daicos Grundler on the 24th of July 2022, at Meneng District in Nauru, assisted Mayswood Timothy to escape from lawful custody and intended to assist Mayswood Timothy to escape.

SUBMISSIONS FOR THE ACCUSED PERSONS

2. Counsel for the accused persons submits:

1. **Republic v Jeremiah** [2016] NRSC 42; where Crulci J said at paragraphs [21]-[22]-the guidelines are:
 - i. If there is no evidence to prove an element of the offence.. the defendant has ‘no case to answer’;
 - ii. If the evidence before the court has been so manifestly discredited.... that no reasonable tribunal could convict upon it, the defendant has no case to answer;
 - iii. If the evidence.. could be viewed as inherently weak, vague or inconsistent.. the matter should proceed ... and the submission ... be dismissed.
2. Section 8 of the Act defines ‘harm’ and physical harm.’
3. **Count 2-** Assist in escape from lawful custody
 - i. Intervention by the police was unlawful and there is no lawful arrest
 - ii. The prosecution’s case show that the police officers entered the backyard of Nofi’s residence for a noise/ mass gathering complaint but-
 - Gave no warnings before seizing property and persons
 - Did not know or apply the operative COVID Gazette (20th July 2022) which did not prohibit the gathering in question
 - The police did not arrest Timothy, the 1st accused at any time.
4. **PW1- SGT Brando**
 - Q- At no time did any of you inform Mayswood that he was under arrest?
 - A- Ye we never arrest him on that time
 - Court- For the whole episode when you arrived, you saw Conway, they argued over the speaker- do you confirm that he was never under arrest?
 - A- No he was not under arrest

5. **PW3- Conway Detabene**

- Q- Was Mayswood under arrest?
- A – No
- Court- Before he punched you, did he commit an offence for you to arrest him?
- The music box

6. **PW2- Shane Brechtefeld**

- Q- When you arrived at Nofi's house, what happened?
- A – I arrived and approached Mayswood. I advised him that we were going to arrest all of them, all the drunkards.
- Q – What was the reason?
- A – The reason is because there is a Covid and we following instructions for mass gathering that's the report we receive.'
- Counsel submits that the above exchange shows that PW2- Shane Brechtefeld did not know the law in force, nor the offence or the 'reasonable necessity' under Section 270.

7. **Cross- Examination of PW2**

- Q-Your role included enforcing the Gazette orders that were in force at that time?
- A- Yes
- Q- What did the Gazette Order prohibit?
- A- During the Covid, I think not to allow to gather 10 plus people
- Q- Did you review the Gazette Order before going to Meneng?
- A- No
- Q- The Gazette order of 20th July 2022... allowed any social gathering at any private residence of not more than 20 people- were you aware of this?
- A- No
- Q- You said arriving there was 10 plus individuals- you agree that you had not enquired the individuals there were part of the household?
- A- No
- Q- You agree you had not established the purpose of the gathering?
- A- No
- Q- You did not tell them of the law they were breaching because you did not know what the law required?
- A- Yes
- Q- You agree- you did not know whether the group in front of you were actually committing an offence?
- No
- Counsel submits that the above exchange shows that the Officer did not know whether any offence has been committed.
- Section 270 of the Crimes Act provides that the arresting officer has reasonable grounds that 'the person has committed an offence and the arrest was reasonably necessary.'

8. Section 11(1) Criminal Procedure Act 1972 (CPA-1972)

- Under Section 11(1) CPA- 1972, ‘an arrest requires actual touching/ confinement (unless there is submission)
- **There was no touching, confinement or submission here**

3. Principles Governing Arrest and Custody

- Counsel refers to **R v Agege** [2021] NRSC 29 (Fatiaki CJ) - In *Murray v Ministry of Defence (Northern Ireland)* [1988] UKHL 13; [1988] 2 All ER 521 Lord Griffiths in discussing an illegal arrest said (at p. 526) :
‘. There can be no doubt that in ordinary circumstances, the police should tell a person the reason for his arrest at the time they make the arrest. If a person's liberty is being restrained, he is entitled to know the reason. If the police fail to inform him, the arrest will be held to be unlawful, with the consequence that if the police are assaulted as the suspect resists arrest, he commits no offence...’
- *Christie v Leachinsky* [1947] AC 573:
.. a citizen is entitled to know on what charge or on suspicion of what crime he is seized.’
- *O’hara v Chief Constable of the RUC* [1997] 1 All ER 129 (as cited):
‘.. the mere fact that an arresting officer has been instructed by a superior to effect the arrest is not capable of amounting to reasonable grounds..’
- CPA 1972, Section 11(1) (as applied in Agege):
‘In making an arrest the person making it shall actually touch or confine the body of the person to be arrested.’
- Counsel adds- ‘that by the police officers’ own evidence, there was:
 - i. No offence at the time
 - ii. No arrest
 - iii. The officers acted on generic ‘mass gathering/ noise notions while seizing private property (the speaker) in a private backyard’

4. Was the Accused in ‘lawful custody?’

- Sections 231 (lawful custody) and 228 (under arrest) are relevant here
- The accused was not told of the reason for the arrest (Agege Case) and O’Hara case rejects ‘arrest by instruction.’
- The police officers accepted that the Timothy Mayswood was not arrested. **Therefore- he was not in ‘lawful custody’ and there is no case to answer for Daicos Grundler.**

5. COUNT 1- Causing Harm to a Police Officer

- The ‘prosecution must prove beyond doubt that the punch (by Mayswood Timothy) caused harm’ to police officer Conway Detabene.

6. **Evidence of ‘harm’ is absent or at best vague’**

- ‘Police Officer Conway’s evidence:
 - i. ‘He threw a punch to my left face.. Still standing..’
 - ii. No medical report
 - iii. No visible injury described (no swelling, bruise, bleeding)
- The State fails to prove ‘physical harm’ - unconsciousness, pain, disfigurement

7. **Residual possibility- ‘physical contact to which a person might reasonably object’**

- Counsel submits that the definition of ‘physical harm’ allows very minor contact to qualify if it is of a kind to which one might reasonably object.
- Looking at the context:-
 - i. This was a scuffle initiated by the police who unlawfully interfered with Timothy in a private yard without arrest or legal basis
 - ii. Two officers were already restraining him when the strike is alleged
 - iii. By their own evidence, officers never informed Timothy he was under arrest
- Relying on *R v Agege* [2021] NRSC 29- **‘where an arrest is unlawful, resistance or incidental contact does not amount to criminal harm’**

8. **Threshold of ‘reasonably objected to’ not crossed**

- ‘Section 8(b) requires considering whether the contact was **reasonable to object to in the circumstances**
The contact only arose ‘after the police grabbed Timothy’s shirt and restrained him from behind. The strike falls within the exclusion in Section 8(b): ‘force acceptable .. incidental to life in the community’ especially where it is a reflex to unlawful force.

9. **Sequence of the Alleged Punch- Irreconcilable Contradictions**

The main allegation in Count 1 is that Timothy ‘intentionally caused harm by punching Constable Conway. The timing of the punch is critical. The prosecution’s own witnesses provide irreconcilable versions.

Officer Brando’s Evidence (PW1) (Cross & Statement)

- Q- As per your statement Conway held Mayswood first- ‘Conway started to hold him so I ran to Mayswood from the back and hold him tight.’
- A- Yes
- Q- While I held onto him Const Conway pulled Mayswood’s arm so when his arm got loose he threw a close fist punch to Const Conway’s face- is that correct?
- A- Yes
- Q- At the time Mayswood swung two officers were restraining him at once?
- A- Yes
- Q- You held him tight from behind?
- A- Yes.. I applied firm force
- Q- And Const Conway was still gripping his shirt at the time?
- A- Yes

Officer Brando's version is unequivocal: the punch was thrown **after** Timothy had already been seized by both officers

10. Officer Conway's Evidence (PW3) (In – Chief vs Statement)

Evidence in Chief:

- Q- What happened after the back and forth between you and Mayswood?
- A- I pulled the speaker so hard that he threw a punch at me
- Q- When you got punched.. what happened next?
- A- Officer Brando held onto him

According to Conway, Counsel submits- the punch came first then Officer Brando restrained him.

Cross/ Statement:

Q- Isn't it correct you recorded: 'You're just hiding behind your police uniform. I tried to hold him and Const Brando came and lock him from the back, so while Const Brando hold him from the back I pulled his arm and he threw a fist punch to my face...' Agree that is in your statement?

A- Yes

Q- So wouldn't you agree that punch he threw was after he was restrained?

A- No

Const Conway contradicts his own statement. His statement records the punch **after** restraint, consistent with Brando's account. His oral evidence says it **came before**.

Brando & Conway's statement: the punch was thrown after the two Officers restrained Timothy.

Conway in -chief- : the punch was thrown before restraint.

11. Applying *R v Jeremiah*:

- Count 2 (Assist Escape from lawful custody- Grundler): No case to answer as no evidence of Timothy being in 'lawful custody.'
- Count 1 (Causing Harm to Police Officer- Timothy): No case to answer as there is no evidence of 'harm caused' under Section 8 of the Act; alternatively, the prosecution evidence is discredited / manifestly unreliable that no reasonable tribunal would convict on it.

SUBMISSIONS BY THE PROSECUTIONS

12. Counsel for the State submits as follows:

- **R v Jeremiah** [2016] NRSC 42- on the guidelines to ‘no case to answer’ applications.
- PW1’s evidence- he was the IO. -Constable Conway and Mayswood Timothy were both holding onto the music box. **‘they were both tugging at it.’** PW1 then saw Mayswood throw a punch at Constable Conway. Daicos Grundler (the 2nd accused) pushed him. He referred to the Record of Interview of Timothy:
Q- Did you remember what you said to Officer Conway on the 24th of July 2022, at around 1000 hours onwards; when he told you that you will be arrested?
Ans- I don’t recall that, but I recall that Conway said to me the speaker has to be taken, **so I refused Conway**
Q- **Did you punch Constable Conway on his facial area when he was arresting you?**
Ans- **Yes**
Q- How many times did you punch officer Conway on his facial area when he tried to hold you?
Ans- Yes, only one punch
Q- Where did you run to after you managed to escape from Officer Brando and Conway?
Ans- I ran to Meneng Hill
- PW2- Shane Brechtefeld- he saw Officer Brando holding onto Mayswood. He saw Daicos Grundler push Officer Brando.
- PW3 – Conway Detabene- the drunkards were warned about a noise complaint. **He approached them and told them that he will be taking their music box.**
- Mayswood approached him ‘and held onto the music box.’ Mayswood told him that ‘he was using the uniform.’ He pulled on the music box so hard that Mayswood threw a punch at him on the left side of his face. He was still standing. Officer Brando then ‘held onto Mayswood and locked him from behind.’

13. Was Mayswood under Arrest? Counsel submits:

- The act of restraining Mayswood ‘constituted lawful arrest.’ ‘The first accused had thrown the first punch. PW1 came to the aid of PW3. PW1 then restrained the first accused. The second accused pushed PW1 and PW3 which resulted in the escape of the first accused.’
- PW1 and PW3 could not inform the accused of his allegations nor his rights as the second accused had run into them and pushed the officers.
- Referring to Blackstone’s Criminal Practice 2023 at Page 1482, 1.66666:
‘ One approach is that a person is arrested if, as a result of what is said or done, the person is under compulsion and is not free to go (Alderson v Booth [1969] 2 QB 216; Inwgood (1973) 57 Cr App R 529; Spicer v Holt [1977] A 987) Arrest is an ordinary English word, and whether or not a person has been arrested depends not on the legality of the arrest but on whether the person has been deprived of liberty to go where he or she please (Lewis v Chief Constable of the South Wales Constabulary [1991] 1 All ER 206). A second approach is that context and purpose are relevant. ’

- The High Court of Australia case of *Michaels v R* [1995] 130 ALR 581- whether arrest is a continuing act? Whether arrest which is unlawful because no reason for arrest given at time of arrest becoming lawful when reason for arrest given.
- Counsel concludes that there is a case to answer here.

PROSECUTION CASE on COUNT 2

14. The elements for Count 2- Assist in Escape from Lawful Custody: Contrary to Section 231(a)(i)(b) of the Act are:

- The accused (Daicos Grundler)
- Frees, or
- Causes the release of
- Timothy Mayswood
- **Held in lawful custody;** and

(b) intends to assist Mayswood to escape.

15. Counsel for the accused submits that since Timothy Mayswood was **not in lawful custody**, the 2nd accused, Daicos Grundler, has no case to answer. This is based on *Republic v Jeremiah* [2016] NRSC 42; where Crulci J said:

‘ i. If there is **no evidence to prove an element of the offence** alleged to have been committed, the defendant has no case to answer.

16. **PW1 Sgt Brando Tabaia testified as follows:**

- On the morning of 24th July 22, he and Constables Detabene and Shane attended to a report of a noise complaint at Meneng District. **‘Base informed us just attend to the report.’** Covid rules – 2 or 3 persons not to congregate. He and Constable Detabene approached a group of more than 10 persons who were drinking at the backyard of a house. PC Brechtefeld waited in the car. The music was loud.
- Constable Detabene (PW3) approached the first accused- Timothy Mayswood. Constable Detabene held the music box. It was off. Mayswood also held onto the music box. They were both tugging at the music box.
- He saw Mayswood throw a punch at Constable Detabene. He didn’t recall where the punch landed. Constable Detabene did not fall to the ground. He approached Mayswood from the back and held him. **‘I was holding him from the back and trying to calm the two (both Constable Detabene and Mayswood) down.’** The second accused, Daicos Grundler pushed him. He released Mayswood, who ran away. He and Constable Detabene went back to the police vehicle. They returned to the police station. He was the IO and obtained statements. He conducted the ROI. He was referred to Question 18 of the ROI where Mayswood admitted punching Constable Detabene once.

17. **On Cross- Examination:**

- He agreed that a noise complaint was not an offence. The drinking was at a backyard of a private residence. Gathering of 2 or more people was **not an offence ‘but told by superior to reduce the gathering.’** The group were not asked whether they actually lived in that residence.
- He noticed Mayswood when Constable Detabene grabbed the music box. He also grabbed Mayswood’s T- shirt. When Mayswood threw a punch at Constable Detabene, he grabbed Mayswood from the back. He held Mayswood tightly from the back. ‘I applied firm force to keep him still.’ Constable Detabene ‘was still gripping his shirt.’ It was a scuffle between the 2 police officers and the first accused- Mayswood. **The owner of the house asked the police officers to leave.**
- Q- he lashed out with the punch?
- Ans- Yes
- Q- He lashed out because Conway punched him?
- Ans- I don’t remember that. He only held his shirt.’
- Q- Others pushed you?
- Ans- They tried to remove us. Shouting at us to go away. Pushed us.
- Q- Because Conway punched Mayswood?
- Ans- Don’t recall.
- **Q- You never informed Mayswood that he was under arrest?**
- **Ans- Yes- we never arrested him.**
- Q- No reason to hold him?
- A- I saw him arguing with Conway.

18. **On Re- Examination:**

- Q- Whilst restrained, Mayswood lashed out with one punch?
- A He threw punch first. They were arguing over the speaker.
- Q- He was not under arrest?
- Ans- **We did not arrest him. I tried to calm down both Conway and Mayswood.**

19. On being questioned by the Court, PW1 Sgt Brando said- **‘Mayswood was never arrested.’**

20. **PW2- PC Shane Brechtefeld** testified that:

- He did not wait in the car as stated by PW1. He received a report of a mass gathering at Meneng District. The boys that were drinking, more than 10, started running away. ‘Covid time, no gathering, they ran away.’ Only some kids were left.’ Returning to Nofi’s residence (where the boys were drinking), he approached Mayswood and **advised him that ‘we’ll arrest all of them- because of Covid- no mass gathering.’** Officers Brandon and Conway – **‘came down from the hill.’** ‘I saw Sgt Brando (PW1) holding onto Mayswood.’ ‘I don’t know why Sgt Brandon was holding onto Mayswood. ‘He couldn’t recall what Const Detabene was doing.
- He saw the second accused, Daicos push Sgt Brando (PW1) and pull Mayswood hand. He went and pulled Daicos shirt. They fell on the ground. ‘One lady came out and told me to stop.’ Other family members came out and told the police officers to leave. He, Sgt Brandon and Const Detabene went back to the police station.

21. Cross -Examination:

- Q- Did you ask whether those people were part of the household?
- A-No
- Q- Did you ask them on the purpose of the gathering?
- A- No
- **Q-You didn't know whether the group committed any offence?**
- **A- No**
- **Q- No basis for arrest as no offence committed?**
- **A- No**
- Q- PW1 said you waited in the vehicle whilst he and Const Conway approached the party?
- A- I was not staying in the vehicle.

22. **PW3- Constable Conway Detabene** testified that:

- On the morning of 24th July 22, they received a report to 'remove drunkards.'PW2 dropped them on top of a hill to 'ambush' them. PW2 went opposite Nofi's house and called out that there were some people drinking where he was. They set 'up an ambush, in case they flee.' The previous shift of police officers informed them the drinking group had been warned about their music.
- Q- At the scene, where did you go to?
- A- Sgt Brando and I- **I said- 'We'll take the music box.'**
- Q- When you approached Mayswood, what happened?
- A- **I took hold of the music box. He got up and told me not to take it- he pulled it.**
- Q- What did Mayswood say to you?
- A- I told him- I was going to take the box. He said- 'You're just using the uniform.'
- Q- What else did he say?
- A- We were struggling.
- Q- Where was Sgt Brandon?
- A- He was behind me.
- Q- Where was Officer Shane?
- A- Right beside me
- Q- What happened when you were pulling/ struggling over the speaker?
- A- While I was pulling the music box, he threw a punch at me. I remained standing.
- Q- After the punch, what happened?
- A- Sgt Bando held him/ locked him from behind. I dropped the speaker to assist Sgt Brando. Daicos pushed Sgt Brando. Sgt Brando let Mayswood go. Both Mayswood and Daicos ran away. We went back to the police station. He did not consent to Mayswood punching him and they were all in uniform.

23. Cross -Examination.

- The report was one of mass gathering in Meneng. He switched off the music box. **He agreed that playing music in a private home was not an offence.**
- Q- When you arrived, the boys were not committing an offence?
- A- Correct
- Q- You got involved with Mayswood because of the speaker?
- A- Yes
- Referred to his police statement- paragraph 3- ..' I put the music speaker down on the ground and I then grab hold of him. I held onto his shirt...I try to hold him and Const Brando came and lock him from the back so **while Const Brando hold from his back, I pulled his left arm and he threw a fist punch to my face ..** I hold his arm. Const Brando trying to lock him again. ..one of the members ran towards me and push Const Brando away.
- Daicos pushed Sgt Brando because he was trying to protect Mayswood.
- **Q- Was Mayswood under arrest?**
- **Ans- No.**

24. Re- Examination

- Q- Why weren't you able to arrest him?
- A- Because he ran away.
- Q- Loud music not an offence, what can you do?
- A- Remove the drunkards
- Q- Why did you say 'Yes" to Daicos pushing Sgt Brando to save Mayswood?
- A- He was trying to save his friend

25. Court

- Q- Was the music box yours to take?
- A- **Not my music box**
- Q- Before the alleged punch, did he commit an offence?
- A- The music box

CONSIDERATION

26. **What was the report received by PW1, PW2 and PW3?**

- **PW1 -Sgt Brando**, states that they received a report from 'Base" (Police Station) of a noise complaint at Meneng District. **'Base informed us just attend to the report.'** He agreed – a gathering of 2 or more people was not an offence **'but told by superior to reduce the gathering.'**
- **PW2- Constable Shane Brechtefeld** said, whilst on mobile patrol, they received a report of mass gathering at Meneng District.
- **PW3- Constable Conway Detabene** said- they received a **report to remove some drunkards.**
- **The evidence as regards the report varied from a noise complaint to removing drunkards and a mass gathering.**

27. As regards the evidence on the report and instructions received by the police officers, I get a different impression as that of CJ Fatiaki in the *R v Agege* case where at paragraph 78 of his judgment, he said:

‘If I may say so, I got the distinctly unfavourable impression after listening to the police officers involved in this case, that it was sufficient for their purposes that they received directions from their superiors to locate and arrest the suspect and they, personally, did not need to know why the order to arrest the suspect had been given. In other words, blind obedience to a superior order is enough.’

In this case there were no suspects. As the Prosecution evidence showed, no offence had been committed. Thus, Mayswood Timothy was not under arrest.

28. What is the alleged offence committed by the group at Meneng?

- PW1 – Noise complaint not an offence. The gathering was ‘not an offence but told by my supervisor to reduce the gathering.’
- PW2- more than 10 people not allowed to gather. **Q- You didn’t know whether the group committed any offence? Ans- No.**
- PW3- **Q- Playing music at a private home not an offence? Ans- Not an offence. Q- When you arrived, the boys not committing an offence? Ans- Correct.**
- All the police witnesses agreed that the group that were gathered there, including the first and second accused persons, Mayswood and Daicos did not commit any offences. I infer from the evidence that Mayswood and Daicos were not suspected of having committed or about to commit a cognizable offence either.

29. I note that there is an offence of causing excessive noise on a public road under Section 16 (1) (i) of the Naoero Roads Act 2017. There is also the offence of public nuisance under Section 248 of the Crimes Act 2016. The police officers that gave evidence in the present case did not refer to any offences at all. In any event, the gathering which the two accused persons were part of in the present case was not in a public place. They were at a private residence.

30. Was Timothy Mayswood lawfully arrested?

- PW1- **Q- You never informed Mayswood that he was under arrest?**
- **Ans- Yes- we never arrested him.**
- **On Re- Examination- He was not under arrest?**
- **Ans- We did not arrest him. I tried to calm down both Conway and Mayswood.**
- PW2- initially said- **we’ll arrest all of them- because of Covid- no mass gathering.**
- On Cross- Examination- **Q-You didn’t know whether the group committed any offence?**
- **A- No**
- **Q- No basis for arrest as no offence committed?**
- **A- No**
- PW3- **Was Mayswood under arrest?**
- **Ans- No.**
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31. As in paragraph [14] above, the elements for Count 2- Assist in Escape from Lawful Custody: Contrary to Section 231(a)(i)(b) of the Act are:
- The accused (Daicos Grundler)
 - Frees, or
 - Causes the release of
 - Timothy Mayswood
 - **Held in lawful custody;** and
- (b) intends to assist Mayswood to escape.
32. All the prosecution witnesses testified that Mayswood was not under arrest. At paragraph 118 of CJ Fatiaki's judgment in the *R v Agege* case, he said:
 ' .. in *Dillon v The Queen* [1982] AC 484 (PC) where a police constable was charged with permitting a prisoner to escape from the station lock -up, the Privy Council in quashing his conviction cited with approval a passage from *Hawkin's Pleas of the Crown* 7th edn. (1795) Vol 3, p 252 where the learned author considers what shall be judged an 'escape' and states, inter alia the following rules:
 Section 1- **First there must be an actual arrest;**..
 Section 2: Secondly, as there must be an actual arrest, **such arrest must also be justifiable.**
 There Lordships added:
 ' ... *it is essential for the Crown to establish that the arrest and detention were lawful and that the omission to do so was fatal to the conviction of the defendant...The lawfulness of the detention was a necessary pre-condition for the offence of permitting escape, and it is well established that the Courts will not presume the existence of facts which are central to an offence..* '
33. In the present case, there was no arrest. Since Mayswood was not under arrest, it follows that during the scuffle with Constable Detabane over the music box, he was not **in lawful custody**.
34. There is no evidence to prove an element of the offence, that Mayswood **was in lawful custody**. I therefore find that the second accused, Daicos Grundler did not cause the release of Mayswood from lawful custody. I further find that he has no case to answer in Count 2.

COUNT 1- Causing Harm to Police Officer

35. The elements of Section 77 (a)(b)(c)(ii) of the Act- Causing Harm to Police Officer, that the prosecution must prove beyond reasonable doubt are:
- (a) The accused (Timothy Mayswood)
 - (b) Intentionally 'engaged in conduct';
 - (c) which caused 'harm' to Constable Conway Detabane;
 - (d) Constable Detabane did not consent to such conduct;
 - (e) Timothy Mayswood believed Constable Detabane was a police officer; and
 - Constable Detabane is in fact a police officer.

36. Counsel for the accused submits that there is no case to answer because there **‘is no evidence of harm’** caused to Constable Detabane. This is also based on *Republic v Jeremiah* [2016] NRSC 42; where Crulci J said:

‘ i. If there is **no evidence to prove an element of the offence** alleged to have been committed, the defendant has no case to answer.

37. Under Section 8 of the Act, ‘harm’ means physical harm or both. ‘Physical harm’ includes:

- Unconsciousness
- Pain
- Disfigurement
- Infection with a disease or
- 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.

38. The evidence summarised above show that Mayswood did hit Constable Detabene. The circumstances surrounding the ‘hit/ punch’ on Constable Detabene’s face needs to be examined. According to PW3, Constable Detabene, when he arrived at the scene, he and PW1, Sgt Brando went towards the group that was drinking. He said- **‘I’ll take the music box.’** He admitted that the music box did not belong to him. The first accused, Mayswood, got up, and told him not to take the music box. Mayswood remarked-**‘You’re just using your uniform.** The scuffle over the music box ensued. According to Constable Detabene, Sgt Brando was behind him and PW2 Const Shane Brechtefeld was **‘right beside me.’** In his police statement, Constable Detabene said- paragraph 3-

..’ I put the music speaker down on the ground and I then grab hold of him. I held onto his shirt...I try to hold him and Const Brando came and lock him from the back so while Const Brando hold from his back, I pulled his left arm and he threw a fist punch to my face..’

39. It is to be noted here that when Constable Detabene –‘put the music speaker down on the ground and I then grab hold of him’, **Mayswood had not committed any offence.** As per Const Detabene’s statement- ‘Constable (Sgt) Brando came and hold him from the back.’ Constable Detabene then – **‘pulled his left arm and he threw a fist punch to my face.’** From this evidence, it is clear that when Constable Detabene and Sgt Brando struggled with Mayswood, no offence had been committed by the first accused. He was not under arrest neither was he in lawful custody. From the evidence, an inference can be drawn. Firstly, I refer to **Republic v Jeremiah [2024] NRSC 11; Criminal Case 10 of 2021 (5 July 2024).** At paragraph [17] I said:

17, ‘In my ruling on the ‘no case to answer submission’ I said:

‘16. The court notes that from the evidence, the ‘intention” of the accused to cause harm to the police officer’ is apparently absent. This is based on the evidence of the complainant himself.

17. I remind myself of the observations of CJ Fatiaki when he dealt with the Bail application in this matter. He delivered his ruling on 16th June 2021.

18. At paragraph 33, he said:

*‘What’s more and relevantly in the circumstances of this case, where alcohol consumption is involved, Section 14(2) of the Crimes Act 2016 provides that: “Conduct can only be a physical element if it is voluntary” in the sense of being an ‘act’ that “is a product of the will of the person who engages in the act.” In other words, the act must be willed and intentional [as defined in Section 17(1)] and **not accidental or the unintended consequence of “flailing ones’ arms “to avoid being held or restrained or being stung by a bee or mosquito.”***

19. From the evidence, it appears that the act or the conduct of the accused here is akin to “flailing one’s arm’ to avoid being held or restrained.

40. I draw a similar inference here that in trying to ‘avoid being held or restrained,’ for not committing an offence, and not being under arrest or lawful custody, the flailing arm of Mayswood caused his fist to hit Constable Detabene. This negates the requisite intention on his part to cause harm to Constable Detabene.

41. In the alternative, I consider- *Murray v Ministry of Defence* (Northern Ireland) [1988] UKHL 13; [1988] 2 All ER 521 Lord Griffiths, in discussing an illegal arrest said (at p. 526):

*‘It has been well settled law, ... that a person must be informed of the reason for his arrest at or within a reasonable time of the arrest. There can be no doubt that in ordinary circumstances, the police should tell a person the reason for his arrest at the time they make the arrest. If a person’s liberty is being restrained, he is entitled to know the reason. If the police fail to inform him, the arrest will be held to be unlawful, **with the consequence that if the police are assaulted as the suspect resists arrest, he commits no offence, and if he is taken into custody, he will have an action for wrongful imprisonment.***’

42. In the present case, Timothy Mayswood was being illegally restrained. The consequent hitting of Constable Detabene’s does not amount to an offence.

43. Further, I note the finding of CJ Fatiaki in the *R v Agege* case, where he said at paragraph [27] :

‘Be that as it may, the prosecution did not produce any medical evidence to establish the ‘harm’ allegedly caused by Constable Dunstall Ika which might be expected given his claim of being punched in the face with a steel ‘knuckle duster.’

44. Similarly, although Constable Detabene testified that he was punched with a closed fist during the scuffle over the music box, there is no medical evidence of any injury or that he felt any 'pain' or suffered any 'harm' as defined under Section 8 of the Crimes Act 2016.

45. I find that there is **'no evidence to prove the element of harm'** for Count 2.

46. Before I conclude, I summarise the relevant law and some commentaries that may guide the police for future reference. In most cases, the provisions are self-explanatory.

Article 5 – Constitution

47. No person shall be deprived of his personal liberty, except as authorised by law;

48. A person who is arrested or detained **shall be informed promptly** of the reasons for the arrest or detention.

49. The observations of Lord Griffiths in the *Murray v Ministry of Defence* Case mentioned in Paragraph [14] above is relevant here.

Criminal Procedure Act 1972

Section 10(4)

- Where a police officer, with reasonable cause, suspects that a cognisable offence (*any offence where the sentence maybe 5 years or more or any offence which the offender maybe arrested without warrant*) has been committed, **he may arrest without warrant** anyone whom he, **with reasonable cause**, suspects to be guilty of the offence.
- *'In the exercise of this power, the relevant 'cognisable offence' must be identified in ordinary language without any need to identify the particular provision contravened.'* per CJ Fatiaki- R v Agege.

Mode of Making Arrest

Section 11

- (1) In making an arrest the person making it **shall actually touch or confine the body** of the person to be arrested, unless there is submission to the custody by word or action.
- (2) A person **may use such force as is reasonable in the circumstances...** or in effecting, or assisting in, the lawful arrest of offenders or suspected offenders...
- (3) The last preceding subsection shall replace the rules of the common law on the question when force used for that a purpose mentioned in that subsection is justified by that purpose.
- *'In this instance, 'the circumstances' that authorise the use of reasonable force to effect arrest are:*
 - *.. ' in the prevention of crime, or*
 - *in effecting or assisting in the lawful arrest of offenders or suspected offenders, or*
 - *persons unlawfully at large.'* (subsection (2))

CRIMES ACT 2016

Section 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, an offence against the 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;
 - (d) to ensure the person appears before a court;
 - (e) to obtain evidence relating to the offence;
 - (g) to protect the safety or welfare of any persons;
 - (i) to prevent the suspect from fleeing from the police or the location of an offence.
- *'The arresting officer acting under Section 270 of the Crimes Act must have in mind at the time of the arrest, 'the alleged offence committed against (the Crimes Act)' and he should inform the person at the time of the arrest, the factual basis and / or nature of the particular offence allegedly committed by him/her. Whatsmore, the officer must be able to justify (if asked) why he considers that the arrest is 'reasonably necessary.' - per CJ Fatiaki- R v Agege.*

Section 248 Public Nuisance

- (1) A person commits an offence if:
 - (a) the person engages in conduct in a public place or within view of a public place; and
 - (b) the conduct amounts to a public nuisance.
- Penalty: 6 months imprisonment
- (2), conduct amounts to a public nuisance if the conduct:
 - (a) unreasonably interferes,... with the peaceful use of a public place and involves behaviour that:
 - i. is disorderly;
 - ii. is offensive;
 - iii. is threatening;
 - iv. is violent;
 - v. is drunken; or
 - vi. disturbs public worship; or
 - (b) involves challenging, encouraging or subscribing to a fight, either orally or in writing.
- (3) In a prosecution for an offence against this section, evidence of more than 1 kind of behaviour mentioned in subsection (2)(a) may be relied upon to prove the offence.
- (4) A police officer may charge a person with an offence against this section despite the absence of a complaint by another person.
- (5) In this section:

- ‘public place’ means a place (whether or not covered by water) or premises that is open to the public or is used by the public, whether or not:
- (b) the place or premises is ordinarily open or used by the public,’
- *‘The importance of the above provision in this case is that Section 270 (op cit.) permits the arrest without warrant where there are reasonable grounds to suspect an offence is being or has been committed against the Crimes Act by the person being arrested and includes an offence of ‘public nuisance’ contrary to Section 248.’ - CJ Fatiaki- R v Agege*

50. In **Republic v Agigo** (2020) NRSC 17, Vaai J said (at [9]- [11]):

‘Section 270 (2) (e) does not authorise a police officer to arrest without warrant any person against whom a complaint is laid... immediately following the laying of a complaint. Reasonable steps should be taken to verify that the complaint is not spiteful... is reasonable and implicates the suspect. The section certainly cannot justify the police to arrest without a warrant a suspect to assist the police gather evidence to prosecute himself or herself. A suspect cannot be forced to break his silence.’

Article 5 (1) (c) of the Constitution dictates that it is incumbent upon the police to establish suspicion based on reasonable grounds that the suspect has committed or about to commit the offence. Reasonable grounds can only be brought about by making inquiries after the complaint is laid. “

51. In the present case, the police officers did not make any initial inquiries. They were not even aware or had any suspicion based on reasonable grounds that an offence had been committed. They just attended to the scene and in the words of PW3- they set up an ‘ambush’ in case they flee. They set up an ambush not knowing what offence was allegedly committed by the group, gathered in a private home.

52. On acting on instructions from their superiors, the House of Lords decision in *O’Hara v Chief Constable of the R.U.C.*, [1996] UKHL 6; [1997] 1 All ER 129 is instructive. Lord Steyn said (at p. 134):

‘Certain general propositions about the powers of constables. (to arrest on suspicion) .. can now be summarised.

- (1) **In order to have reasonable suspicion the constable need not have evidence amounting to a prima facie case.** Ex hypothesis one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough: *Hussein v Chong Fook Kam* [1969] UKPC 26; [1970] A.C. 942. 949
- (2) **Hearsay information may therefore afford a constable reasonable grounds to arrest.** Such information may come from other officers: *Hussein’s case*, *ibid*.
- (3) **The information** which causes the constable to be suspicious of the individual **must be in existence to the knowledge of the police officer** at the time he makes the arrest.
- (4) The executive ‘discretion’ to arrest or not... vests in the constable, who is engaged in the decision to arrest or not, **and not his superior officers.**

- Given the independent responsibility and accountability of a constable under a provision such as section 12(1) of the Act of 1984 it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of section 12 (1). It is accepted ... **that a mere request to arrest without any further information by an equal ranking officer, or a junior officer, is incapable of amounting to reasonable grounds for the necessary suspicion.**

53. In the present case, PW1, PW2 and PW3 had different versions of what their instructions were. They did not inquire nor verified whether the ‘complaint was spiteful.’ They did not have any reasonable suspicion of any alleged offences. Orders from Base appeared vague. The executive discretion to arrest or not vested in PW1, PW2 and PW3 as frontline officers attending to the report. As discussed in *the O’Hara v Chief Constable of the R.U.C*, in paragraph [52] above, such discretion vests in the police officers who ‘are engaged in the decision to arrest or not. In this case, PW1, PW2 and PW3 did not arrest Mayswood Timothy as in their words - he did not commit any offence. The consequential conduct of both Mayswood Timothy and Daicos Grundler do not amount to having a case to answer for the offences as charged.

CONCLUSION

54. From the discussion above, I find that the first accused, Mayswood Timothy has no case to answer on Count 1.
55. I also find that the second accused, Daicos Grundler has no case to answer on Count 2.
56. The no case to answer submissions are upheld.
57. Mayswood Timothy and Daicos Grundler, you are acquitted accordingly.

DATED this 07th Day November 2025


Kiniviliame T. Keteca
Judge

