



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 1/2019

THE REPUBLIC

-v-

RORY DETAGOUWA

*Before: RM Penijamini R. Lomaloma*

*Republic: Ms. Susan Serukai*

*Defendant: Mr. Ravunimasei Tagioakatini*

*Date of Trial: 22, 27 January 2020*

*Judgment: 5 February 2020*

JUDGMENT

**Catchwords:** *The Course of Justice in Nauru in a criminal matter is triggered by the matters set out in section 4(2)(a) of the Administration of Justice Act 2018; It is not the course of justice when police act unlawfully; A police officer on duty is not performing his functions when he is acting unlawfully; Police officer deemed to be on duty – NPF Act.*

## **Introduction**

1. The defendant is charged with one count of perverting the course of justice contrary to section 227 of the Crimes Act and one count of Obstructing a Public Official contrary to section 242 of the Crimes Act 2016.
2. The prosecution called 3 witnesses and after I had found that there was a case to answer on each of the counts, the defendant elected to give an unsworn statement.

## **The Prosecution Evidence**

3. Sgt. Sareima Aremwa (PW1) testified that she had been in the Nauru Police Force since 2011. On 15 December 2018, she was off duty and sitting in the passenger seat of a vehicle driven by her husband in a clockwise direction travelling from Capelle's to Nibok. Sgt. Aremwa said her husband asked her to look at a vehicle which was zig-zagging on the road in front of her. She saw the vehicle, a Honda CRV and continued:-

"he was not steady, getting into the oncoming lane. When I saw him, he was about 10 meters away. I could see oncoming cars slow down to avoid the vehicle that was zig-zagging. When I saw it, as a police officer, I reported it immediately to the Police station. The report was received by Sgt. Priscilla. I reported it because it was dangerous to the public road users. I reported it by asking if there were any police traffic stops in Baitisi to intercept the CRV. While talking on the phone with me, she talked on the radio with her colleagues to be on standby. We were still talking on the radio when we reached RON Hospital and I told my husband to blast his lights at the police there and they stopped the CRV. Constable Cain was one of the officers who intercepted the vehicle. I did not know who was driving the CRV.

I then told PC Tom to drive the vehicle to the PS before someone gets hurt. I then went straight home. I had been in traffic before. I was there for 3 years. The procedure if there is a drunk driver, we arrest the person and take him to the station with the vehicle or motorbike. You can tell if he is drunk from the smell of alcohol or his manner of driving but now we have RBT (Random Breathalyzer Tests). We take the driver and the vehicle to the station to prevent accidents and whatever comes

about with drunk driving. The drunk driver is put in the police vehicle. A police officer will drive his vehicle to the police station that is the procedure.”

4. In cross examination, Sgt. Aremwa said that she spoke to PC Tom that night, he was outside and she was inside her vehicle. She didn't see who was in the CRV. She told PC Tom to drive the vehicle to the police station. She could see the other police officers there with PC Tom at the time and he was the most senior. The OIC at the Police Station was Inspector Raynor Tom. Sgt. Aremwa then went home.
5. Sgt. Priscilla Dake testified that she has been in the NPF for 10 years. She was on duty on 15<sup>th</sup> December 2018 at the Police station when she received the report from Sgt. Sareima Aremwa about the vehicle swerving on the road. Sgt. Priscilla said she informed the patrol officers to seize the vehicle. She said that she contacted them by phone and spoke to PC Cain Tom.

“They were on foot patrol and I told them to seize the vehicle as it was heading their way. They were across from the RON Hospital. I told them to stop the vehicle as it was reported driving in a dangerous way. The procedure for seizing the vehicle is if it's involved in a crime, it will be impounded and taken to the Police station. PC Tom was to conduct a traffic “blitz” to stop the car. After they seized the vehicle, I tasked PC Can Tom to drive the vehicle to the Police Station. PC Tom didn't do that as Sgt. Rory Detagouwa drove the car to the station. I know this because PC Tom contacted me and told me this. Sgt. Rory was not part of the patrol unit, he was not on duty at the time. Sgt. Rory was one of the passengers in the vehicle—the reported vehicle. I received the vehicle at the Police Station. I met Sgt. Rory at the front desk. He was smelling of alcohol. When he spoke to me, I could smell alcohol in his breath. We spoke. He was telling me he was the driver and he was “sober minded.” I asked him if he was drunk and he admitted that he was drunk at the time. I informed him that he will be arrested for driving and drinking. No tests were carried out on him because the Dragger machine was out of order at the time. When I told him he was going to be arrested, he did not say anything. He was then arrested by Senior Constable Shaka Bill. I didn't know where Cain Tom was at the time.

6. In cross-examination, Sgt. Priscilla said PC Tom told her that Daniel Jeremiah was the driver of the CRV when they stopped it; that the vehicle was impounded when it was taken to the Police station; that the vehicle was not owned by Daniel Jeremiah; that the other officers on patrol with PC Tom were recruits; that she is aware of the reputation that Daniel Jeremiah was a tough person but that she knew PC Tom and the 4 recruit officers at the scene could handle the situation.
7. Sgt. Priscilla said that the only reason the defendant called her from the scene was to let her know that he was driving the vehicle to the station.

**PW3 PC Cain Tom**

8. PC Cain Tom testified that he has been in the NPF for 4 years. He recalls the 15<sup>th</sup> December 2018. He was on duty from 3 p.m. to 11 p.m. He recalls receiving a report from Sgt. Priscilla of a blue Tribute zig-zagging on the road. This was about 8:30 pm. He was on foot patrol with 4 others at Denig District. He stopped the vehicle. He saw the driver was Daniel Jeremiah. Also in the car was the accused, Rory Detagouwa, David Detagouwa and Jensen Agir. He continued:

Daniel Jeremiah looked OK and I told him I was going to impound the vehicle and I was going to arrest him also. I told him this so he would know. He looked angry but he was okay. He understood what I was explaining to him. He didn't say anything but he looked annoyed when I asked him to get out of the car. He didn't do anything,

Rory got out of the car and asked me who was our superior. I told him Sgt. Priscilla. He then called HQ... he was saying that he was the driver of the vehicle. He was conversing with Priscilla. He was lying on the phone. He looked normal.

Rory got off the phone and told me that Priscilla told him to take the car to HQ. I then waited for the other police vehicle to arrive and we escorted him back to HQ.

I allowed him to drive back because I was conflicted because he was a Sgt. As a sergeant, we could not touch him. I was a constable and all my colleagues were recruits.

I knew my powers of arrest at the time. Part A, Motor Traffic Act gives me power to make an arrest. Don't need warrant to arrest but when other guy intervened I could not get involved because he was a sergeant.

**Defence Witness 1 (DW1) – Sgt. Rory Detagouwa**

9. After I found that the defendant had a case to answer, he elected to give an unsworn statement. He said Daniel Jeremiah was driving that night. He had had 2 beers between Meneng Hotel and Denig. He was chatting with his cousin in the backseat and did not notice the vehicle zig-zagging. When they saw the police roadblock, he told Daniel Jeremiah to comply. The Police officer came to the driver's window and asked him to lower the window so they could talk. The officer came and told him they were going to impound the vehicle and he was going to be arrested. The defendant said he knew Daniel Jeremiah was not happy. Constable Tom asked Daniel to get off the vehicle but he refused. When Constable Tom saw him, he told him that they were going to arrest Daniel. The defendant told PC Tom to go ahead as it was his call.
10. The defendant said PC Tom told Daniel Jeremiah again to get out of the vehicle but he did not want to get off. When he saw a lot of people gathering and approaching their vehicle, the defendant told PC Tom to "make it the proper way" rather than seeing them like that. The defendant said PC Tom asked him, "so what are you gonna do?" The defendant replied that the best option was for him (the defendant) to take the car to the Police station and for Daniel to be arrested there. The defendant said that PC Tom said it was okay and he was going to call his superior officer. PC Tom said it was Inspector Raynor Tom and Sgt. Priscilla. After contacting Sgt. Priscilla, he gave the phone to the defendant. He explained to her that he'd had only 2 beers and he could drive the vehicle to the station but Sgt. Priscilla did not agree that he should.
11. The defendant then told PC Cain about his talk with Sgt. Priscilla and proposed to him that it was best if he drove the car to the Police station and PC Tom can escort him in a police vehicle. According to the defendant, PC Tom agreed and he took the police vehicle from PC Nene and escorted him to the Police Station.

## The Law

12. Sections 227 and 242 of the Crimes Act provides:-

### *227 Perverting the course of justice*

*(1) A person commits an offence if the person intentionally perverts the course of justice.*

*Penalty: 5 years imprisonment.*

*(2) In this section:*

*'perverts' includes obstructs, prevents or defeats.*

### *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.*

13. Both charges in this case have physical elements of the charge but do not have a fault or mental element in the charge themselves. Section 22 of the Crimes Act provides that the fault element for these offences shall be intent:

### *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.*



## ANALYSIS

### The Course of Justice

14. The course of justice seems to be interpreted differently in Australia from that accepted in the UK, New Zealand and other commonwealth countries. In the case of *The Queen v Rogerson*<sup>1</sup>, Mason CJ and McHugh said at p. 276:

*It has been suggested that "the course of justice" and "the administration of justice" include police investigations as such. True it is that some judicial comments are capable of being understood as lending support to that bald proposition(40)<sup>2</sup> These comments have been made for the most part in cases in which a person has been convicted of an attempt to pervert the course of justice by misleading police in the investigation of a crime or suspected crime.*

*But police investigations do not themselves form part of the course of justice. The course of justice begins with the filing or issue of process invoking the jurisdiction of a court or judicial tribunal or the taking of a step that marks the commencement of criminal proceedings. In *James v Robinson* (41), Kitto, Taylor, Menzies and Owen JJ stated: "**The proposition that proceedings are pending in criminal cases after a person has been arrested and charged is firmly established.** I therefore agree with the rejection by the Full Court of the Supreme Court of South Australia in *Reg v Todd* (42) of the proposition that the course of justice under consideration includes the investigation by the police of facts for the purpose of ascertaining whether or not a crime has been committed.*

*In this respect, it is important to note that the expression "the course of justice is synonymous with the expression "the administration of justice." In no relevant sense do the police administer justice, notwithstanding that they investigate crime, institute proceedings(where appropriate) and assist in bringing prosecutions.*

*(emphasis mine)*

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<sup>1</sup> (1992), 174 CLR 268

<sup>2</sup> References omitted for the purpose of this Judgment)

15. In the same case, Deane J said<sup>3</sup> at 293, *“Police inquiries do not, of themselves, constitute “the course of justice” for the purposes of the offence of perverting the course of justice.”* It is necessary, in a case involving alleged conduct to divert or frustrate police inquiries to identify some actual or potential relationship between the alleged conduct and some pending probable or possible curial proceedings whose course the accused intended to pervert.”

16. McHugh J<sup>4</sup> traced the history of the common law offence and said at 299,

*“English(95) and Irish (96) Courts, however, have now accepted that by itself a false statement to a police officer in relation to an actual, alleged or suspected crime can constitute the offence of attempting to pervert the course of justice. Nevertheless, I cannot accept that such a statement by itself is an offence under the common law of Australia.”*

17. The offence of perverting the course of justice in Nauru is a statutory offence. The words “course of justice” is synonymous with the “administration of justice.” In Nauru, the Administration of Justice Act 2018 defines a court proceeding in section 4(2(a) with regards to a criminal offence as:

*(2) In this Act, a court proceeding is pending from the time that it commences to the time it is finally decided, struck out, discontinued or terminated which includes any potential or actual appeals. (3) A court proceeding commences:*

*(a) in the case of an offence, from the earliest of the following events:*

*(i) the issue of a warrant for arrest of a person for an offence;*

*(ii) the issue of a notice to attend court;*

*(iii) summons to appear before the court to answer any charge or of an offence; or*

*(iv) the arrest of a person by the Nauru Police Force or any authorised officers under a written law;*

*(emphasis mine)*

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<sup>3</sup> (1992), 174 CLR 268 at 293

<sup>4</sup> (1992), 174 CLR 268 at 299



18. I am of the opinion that in Nauru, the offence of perverting the course of justice can only start for a criminal offence when any of the situations set out in section 4(2)(a)(i) to (iv) have been met.
19. On the facts before this court, the defendant would therefore be not guilty of the offence of perverting the course of justice because none of the events in section 4(2)(a)(i) to (iv) had happened. However, if I am not correct, I will examine the other areas of the law further because the defendant is a police sergeant and the Nauru Police Force Act has a bearing on the case.
20. The starting point is to consider the evidence of Sgt. Sareima Aremwa, who saw the driver of the CRV driving carelessly or recklessly or dangerously and she followed the vehicle and called the police station to report a possible offence. Any offence committed was committed by Daniel Jeremiah yet he was not investigated further or arrested. There are two possible acts by Sgt. Detagouwa that could form the physical elements of the offences charged:-
- a. Interfering in the arrest of Daniel Jeremiah; or
  - b. Interfering with the duty of PC Cain Tom to take the vehicle to the Police Station.

#### **Interfering with arrest of Daniel Jeremiah**

21. Sgt. Aremwa directed PC Tom to drive the CRV vehicle to the police station. She did not tell him why. She did not give any orders for the arrest of the person who had been driving it before it was stopped. Sgt. Priscilla directed PC Tom to drive the vehicle to the station. She gave no evidence that she directed or gave any orders for the arrest of the driver of the CRV.
22. PC Tom said after he stopped the vehicle, he went to the driver's side and told the driver, Daniel Jeremiah that he was going to arrest him and impound the car. Daniel Jeremiah refused to get out of the car. It was then that the defendant got out of the car and asked PC Tom who was his superior was. When told it was Sgt. Priscilla, he spoke to her on the phone. PC Tom said that the defendant lied to Sgt. Priscilla by saying he was the driver of the car. I do not believe this as there were clearly witnesses, including 4 recruits who saw Daniel sitting in the driver's seat. Sgt. Aremwa did not mention in her evidence that she saw the car stop and the drivers change while she was following

the car. The defendant is a police sergeant with many years' experience in the police force. It would be utter stupidity for him to try and say he was the driver of the vehicle when it was stopped when he clearly was not in the driver's seat. PC Tom heard only one side of the conversation between the defendant and Sgt. Priscilla and in any case, in her evidence, Sgt. Priscilla did not once mention that the defendant claimed he was the driver of the vehicle before it was stopped.

23. The next issue from the fact situation is the arrest of Daniel Jeremiah for resisting PC Tom's arrest.
24. The defendant is a police sergeant and section 16 of the Nauru Police Force Act 1972 deems him to be on duty at all times when required:-

***16 Police officer to be deemed on duty***

*Every police officer shall for the purposes of this Act be deemed to be always on duty when required to act as such and shall perform the duties and exercise the powers granted to him under this Act or any other law at any place in Nauru where he may be doing duty.*

*(emphasis mine)*

25. The defendant saw that the driver refused to get out of the vehicle and he then got out of the vehicle to help resolve the situation before it escalated. His actions following that show what his intentions were. A defendant's intention can be inferred from his conduct<sup>5</sup>.
26. The defendant, being deemed to be on duty by virtue of section 16 of the NPF Act and being more senior than PC Tom, assessed the situation, and decided to intervene. He then decided to drive the vehicle to the Police station with Daniel Jeremiah as a passenger. He made a judgment call based on the situation he perceived and the refusal of Daniel Jeremiah to comply with the orders of PC Tom. This would prevent the situation escalating at the scene if an attempt was made to arrest the driver there. The evidence shows that there was a crowd gathering and there were only PC Tom and 4 recruits present and a reasonable person could see that it is common sense to take the driver to the Police station where he could be easily arrested without complications. The defendant then acted on his assessment and drove the vehicle to the Police Station with Daniel Jeremiah in it.

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<sup>5</sup> R v Venna (1976) QB 421; Adeang v Director of Public Prosecutions [1982] NRSC 4

27. The Police force is a disciplined service within a very structured organization. Section 17 of the Nauru Police Force Act requires junior officers to obey their superiors. Once Sgt. Rory Detagouwa stepped out of the car in a developing situation that could escalate, he is deemed to be on duty pursuant to section 16 of the NPF Act and became PC Tom's superior officer on the scene. In any command situation, the decision of the commander on the ground is always preferable to that of someone in a command post miles away. This is because the person on the ground can see what the situation is, he can hear the people speaking, assess their emotions, assess the risks and apply his knowledge and skills gained with experience to determine the best course of action to take in the circumstances. A commander who is off the scene is operating on very limited information conveyed to him or her and any decision he or she makes might not be the best in the given situation. A person on the ground can disregard orders given by a superior miles away from the scene in any such situation if the situation dictates it. The key issue is to consider the intentions.

28. In Wilmott v Atack[1976] 3 All ER 794, police officers chased a car which then drove into a private club car park. The men in the car got out and the police tried to arrest one of the men who had alighted from the car. The manager of the club intervened and told the man being arrested not to resist as it would not be good for him. He pushed a couple of the police away and was charged for assault and willfully obstructing the constables. He was convicted and the appeals ended up in the Queen's Bench Division. Lord Groom-Johnson, with whom the other two judges agreed, said at page 800:

*"... in my view, there must be something in the nature of a criminal intent of the kind which means that what is done is done with some form of hostility to the police with the intention of seeing that what is done is to obstruct, and that it is not enough merely to show that he intended to do what he did and that it did, in fact, have the result of the police being obstructed."*

29. Their Lordships allowed the appeal and quashed the conviction.

30. I find from the fact that Sgt. Rory drove the vehicle with Daniel Jeremiah to the Police Station showed that his intention was not an act hostile to the police. In fact, it was to help diffuse a situation that could have resulted in unnecessary offences being committed or even injuries to be suffered. Sgt. Rory was doing his duty as a senior police

officer who was deemed to be on duty by section 16 of the NPF Act 1972. On that basis I would acquit him.

**Interference with the orders to PC Cain Tom to drive the vehicle to the Police station.**

31. The act that triggered this order was a possible violation of the Motor Traffic Act 2014 and we must look at the police powers under this Act to see if the orders were lawful.
32. The power to stop the vehicle, take it to the Police station must therefore be under the Motor Traffic Act 2014. The power to impound vehicle under the Motor Traffic Act 2014 is set out in section 115(c):

***115 Power to control traffic or parking***

*(1) A police officer may, for the purposes of traffic control:*

*(c) seize and remove to an impound facility a motor vehicle or trailer:*

*(i) where the motor vehicle or trailer is involved in an accident, for the purpose of having it or any portion of it examined, or for production as an exhibit in any proceedings under this Act;*

*(ii) where it is parked contrary to a parking offence provision;*

*(iii) where it is left on the public street for a period exceeding twelve hours and is in the opinion of the police officer abandoned;*

*(iv) where the motor vehicle or trailer is in, or left in, a position that in the opinion of the police officer is hazardous or dangerous to other road users or the public;*

*(v) where, in the opinion of the police officer, the motor vehicle or trailer is in, or left in, a public street, in such a position as to obstruct or partially obstruct access to, or exit from, any property that is adjacent to a public street;*

*(vi) where the police officer has reasonable cause to suspect that the vehicle is not registered or has breached any other provision of this Act or the Regulations;*

33. There is nothing in section 115(c) above that gives the Police the power to seize and take the vehicle driven by Daniel Jeremiah to the Police station or to impound it in the fact situation facing PC Tom at the time he told Daniel Jeremiah he was going to impound his vehicle. From the fact situation, there is also no power for PC Tom to seize the vehicle under the Criminal Procedure Act or the common law. The order therefore given by Sgt. Aremwa and Sgt. Priscilla Kane for PC Tom to drive the vehicle to the Police station and impound it was therefore an unlawful order. PC Tom as a Police Officer is obliged to follow a **lawful** order given to him under section 17 of the NPF Act:

*17 Police officers to obey lawful orders*

*Every police officer shall obey every lawful order of a superior officer whether given verbally or in writing and shall obey and conform to Police Regulations and to Orders made or issued under this Act.*

*(emphasis mine)*

34. If the order given was unlawful, then PC Tom would not have been carrying out his lawful duty if he executed the order.
35. Police policy to take the vehicle to the station for safe keeping cannot overcome the provisions of a law. They could in the situation that a drunk driver is arrested, park his vehicle safely and call for a friend or relative of the driver to come and pick it up or ask the driver **for his or her consent** for a police officer to drive the vehicle to the police station for safe keeping. The police cannot by policy or standing orders or standing operating procedures forcibly take the vehicle to the police station or elsewhere for safekeeping without the consent of the driver, unless the vehicle was stolen. If the vehicle was stolen, then their powers of arrest and seizure under the Criminal Procedure Act 1972 or the common law allows them to seize the vehicle but here, that question never arose.
36. For the first count of perverting the course of justice, the course of justice cannot involve be the doing of something unlawful. For the second count under, section 242(a) a police officer acting unlawfully is not performing the functions of a public official.
37. A police officer is a public official and the rule of law says that every act of a public official in executing his duty must be done according to some law. This means that a




police officer must do everything lawfully. Obstructing a police officer doing an unlawful act cannot be an offence under section 242 of the Crimes Act 2016.

### **The Course of Justice in Nauru**

38. The offence of perverting the course of justice in Nauru for a criminal matter must therefore have the following elements:-
- a. An act to trigger the course of justice as defined in section 4(2)(a) of the Administration of Justice Act must occur;
  - b. The defendant must make a physical act;
  - c. The defendant must intend, when making the physical act to have intended that it pervert the course of justice.
  - d. The act done was not justified, excused or permitted by any law.
39. I find, from the facts and the reasons given above that the prosecution have failed to prove beyond reasonable doubt that in both charges, the defendant was acting with an intent to pervert the course of justice or to prevent PC Tom from arresting Daniel Jeremiah.
40. Further I find that the defendant, Sgt. Rory Detagouwa was justified or authorized in what he doing what he did by section 16 of the Nauru Police Force Act 1972.

### **Conclusions**

41. I find, for the reasons given, that the defendant, Sgt. Rory Detagouwa not guilty and I acquit him of both counts charged.

  
Penijamini R Lomaloma  
Resident Magistrate

