



**IN THE DISTRICT COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No. 45 of 2023

**BETWEEN:                      REPUBLIC OF NAURU**

**PROSECUTION**

**AND:                              DENIRO TIMOTHY**

**DEFENDANT**

**BEFORE:**                      Resident Magistrate Mr. Vinay Sharma

**DATE OF TRIAL:**              15, 16 May and 8 August 2024

**DATE OF JUDGMENT:**      4 October 2024

**APPEARANCE:**

**PROSECUTION:**

J Adun

**DEFENDANT:**

R Tagivakatini and V Soriano

# JUDGMENT

## INTRODUCTION

1. The defendant is charged as follows:

### COUNT 1

#### Statement of offence

**Drinking:** *Contrary to Section 17(1)(b) and 2 of the Naoero Roads Act 2017*

#### Particulars of Offence

**DENIRO TIMOTHY** *on the 2<sup>th</sup> day of January 2022 at Nauru in Anibare District did consume alcohol in a public place while travelling in a vehicle as a passenger.*

2. On 17 May 2024 the prosecution presented its case. After the prosecution closed its case on the same date, I found that there was sufficient evidence to put the defendant on his defence for the charge laid against him. I proceeded with the trial. I also informed the defendant that he may choose to remain silent, give an unsworn statement or give evidence under oath. The defendant opted to give evidence under oath.
3. On 18 May 2024 the defence opened its case and proceeded to call the defendant to give evidence under oath. The defence closed its case after the defendant gave his evidence. The parties sought time to file written closing submissions.
4. On 28 June 2024 the defendant's counsel filed the defendant's Closing Submissions.
5. On 6 August 2024 the prosecution filed its Closing Submission.
6. On 8 August 2024 I heard both parties on their closing submissions.

## PRINCIPLES RELEVANT TO THE DECISION-MAKING

7. I will outline my role before I proceed to consider the evidence of the witnesses.
8. I am required to decide whether the prosecution has proven the essential elements of the alleged offence beyond reasonable doubt. The prosecution has the onus to prove the elements of the charge beyond reasonable doubt. The defendant is not required to prove or disprove anything. I cannot find the defendant guilty unless the evidence which is

accepted by me satisfies me beyond reasonable doubt of his guilt. If there is an explanation consistent with the innocence of the defendant, or I am unsure of where the truth lies, then I must find that the charge has not been proven beyond reasonable doubt.

9. A reasonable doubt will result if in my mind I am left with an honest and reasonable uncertainty about the guilt of the defendant after I have given careful and impartial consideration of the evidence.
10. While the burden of proof is on the prosecution, it does not mean that every fact in dispute is to be proved beyond reasonable doubt, only the elements of the charge needs to be proven beyond reasonable doubt. However, evidentiary facts must be clearly proved before they are treated as established.
11. I have considered all the evidence placed before me. I must determine whether each of the witnesses are an honest, reliable and credible witness, and in doing so I can rely on the evidence that the witness has given and make a finding that the facts about which the witness has given evidence on has been proven. With this regard, I can accept part of the witness's evidence and reject part of that evidence or accept or reject it all. I am not required to give all evidence the same weight.
12. In assessing the credibility of a witness, I examined the veracity and/or sincerity of the witness to see whether he or she was trying to be truthful. Further, to assess the reliability of a witness, I examined the witness's ability to accurately recall a memory. The following are the factors that I considered:
  - i. *ability and opportunity to observe events*
  - ii. *firmness of memory*
  - iii. *capacity to resist pressure to modify recollection*
  - iv. *factors which might have resulted in reconstruction or mistaken recollection*
  - v. *willingness to make concessions where recollection may be faulty, especially when favorable to the other party*
  - vi. *testimony that seems unreasonable, impossible or unlikely*
  - vii. *partiality/motive to lie*
  - viii. *general demeanor*
  - ix. *Internal consistency: does testimony change during direct or cross examination?*
  - x. *External consistency: does testimony harmonize with accepted, independent evidence?*<sup>1</sup>

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<sup>1</sup> *R v Killman* [2024] BCPC 104

13. I remind myself that inaccuracy about secondary, marginal or unimportant facts often arises in cases because the witnesses are focused on central facts, and may differ on what evidence they give based on what they perceive to be essential. Further, witnesses also have different abilities of observation and recollection of their memories.
14. I must deliver my judgment in accordance with the evidence, which would require me to make findings of facts upon considering the evidence before me. With this regard, I am to carefully consider the evidence logically and rationally, bringing an open and unbiased mind to the evidence but I may use my common sense and experience in my assessment of the evidence before me. I must do this dispassionately, impartially, without prejudice, and without favour or ill-will.
15. From the established facts, I may draw a reasonable inference, which must be a justifiable inference and drawn beyond reasonable doubt. I must not draw an inference from the direct evidence unless it is a rational inference in all the circumstances.
16. The defendant did not have to give evidence during his trial, however, he gave evidence in his defence. His evidence is no better or worse than the evidence of the other witnesses just because he is the defendant. I must approach his evidence in the same way that I would approach the evidence of any other witness. I must also remind myself that the defendant did not assume any onus to prove anything at the hearing when he decided to give evidence in his defence. I can only find the defendant guilty of the alleged offence after I have considered all the evidence, and having done so I have rejected the defendant's evidence, and accepted beyond reasonable doubt the prosecution's evidence in relation to the essential elements of the alleged offence.
17. I must emphasize that in reaching my decision, I am not required nor is it necessary for me to articulate findings about every part of the evidence. All I have to do is determine whether the prosecution has proven all the elements of the alleged offence beyond reasonable doubt. With that regard, I may have to resolve some primary disputes over the facts.
18. I have considered all the evidence before me. I will summarize most of the evidence before me, and discuss the parts of the evidence which are essential to my analysis.

## PROSECUTION'S CASE

19. On 17 May 2024 the prosecution opened its case and called three witnesses, namely, Sergeant Jamieson Laan ("PW1"), Sergeant Vicromic Starr ("PW2"), and Senior Constable Nordoff Detageouwa ("PW3"). On the same day the counsel for the prosecution closed its case.
20. I have considered all the evidence given by the prosecution witnesses. A summary of the prosecution witnesses' evidence are as follows.

### *Evidence of PW1*

21. PW1 has been with the Nauru Police Force for 2 years 6 months to date. He is assigned to the Criminal Investigations Unit. On 2 January 2022 at around 7.41am he was stationed at the Boat harbor, Anibare District, maintaining a police road blitz with one police reserve, namely, Rubina Kam. While manning the police blitz he saw a motorbike coming from Ijuw District going towards Meneng District. The motorbike was driven by one Anvickson Jeremiah. He indicated to the driver to slow down at the blitz. Instead of slowing down, the driver made a u-turn and then drove off. He could see the driver because he did the u-turn from not too far away. He saw a person sitting at the back of the driver who looked young and of slim physique. The passenger was crouching and hiding himself.
22. During cross-examination, PW1 said that he got recruited in November 2021. That he made his police statement on 26 November 2023, almost 23 months after the incident. His reason for not giving a statement until 26 November 2023 was that he thought that it was not necessary and that his supervisor didn't tell him to make a statement. He stated that he recalled what happened on the date of the incident because he made notes of it in a diary. The defence put its case to PW1 that the driver of the motorbike came from the direction of Meneng District going towards Ijuw District and that the driver sought PW1's permission to go through because they were going to another location. PW1 also gave evidence that he did not see anyone drinking alcohol, and that he did not know if the investigating officer did a breathalyzer test.
23. During re-examination, PW1 clarified that he relied on his written notes to make his statement. He also observed that the driver was not sober. He also stated that he remembered the driver making a u-turn because the driver had yelled out to him and said that he is going to drop his friend in that area.

### *Evidence of PW2*

24. PW2 gave evidence that he has been employed by the Nauru Police Force for 2 years 6 months. On 2 January 2022 at 7.41am he was working on a night shift and he was with PW3 at the time. They were directing drunk individuals to leave public areas and received a report from the "Central Police Reception" about a "white Scrambler" which

made a u-turn in front of traffic officers at Anibare District and was travelling towards Ijuw District. At the time they were in a police vehicle travelling from Ijuw District towards Meneng District and were near the hill going down-hill at Ijuw District. PW2 was driving the police vehicle. The report mentioned Anvickson Jeremiah being the driver. PW2 stopped the motorbike at the "Expat area". The driver of the bike pulled over. PW2 went to the motorbike and turned the ignition off. He observed that the defendant was under the influence of alcohol, and he also saw the defendant who was the passenger on the bike holding a "Pure Blonde" can of beer. He cautioned the driver and the defendant, and told them of their rights. PW2 gave evidence that he told the defendant that he would be arrested for drinking alcohol because he was holding an open can of beer in his hand as a passenger. The two were arrested and detained in the cage of the police vehicle.

25. During cross-examination PW2 admitted that in his police statement he did not state that the defendant was holding a can of "Pure Blonde" beer. Further, he gave evidence that he did not see the defendant drinking.
26. The prosecutor did not re-examine PW2.

***Evidence of PW3***

27. PW3 gave evidence that he has been employed by the Nauru Police Force for the past 6 years. On 2 January 2022 at 7.41am he was in a police vehicle with PW2. They were clearing drunkards from public places. While in the vehicle with PW2, they received a report that two drunkards had made a u-turn at the road blitz at Anibare boat harbor and it was believed that the two were avoiding the road blitz. PW3 and PW2 were somewhere in Ijuw when they received the report. He couldn't recall whether the report mentioned any names. They met the "Scrambler" at the village where RPC workers lived, after they travelled down-hill from Ijuw. Anvickson Jeremiah was driving the "Scrambler" and the defendant was the passenger. He knows the defendant but is not his friend. PW3 gave evidence that when he approached the defendant the defendant was holding an open can of beer and a bottle of vodka. PW3 observed that the driver and the defendant were drunk. The driver and the defendant were arrested and taken to the police station.
28. During cross-examination, PW3 admitted that his oral evidence contained some evidence that was not in his police statement. Further, he stated that in his police statement he stated that the two drunkards passed the police blitz because the officers at the blitz had reported that the two drunkards passed them and not that they made a u-turn. PW3 also gave evidence that he did not conduct any sobriety tests on the defendants, and did not see the defendant drinking alcohol.
29. During re-examination, PW3 explained that they did not do the breathalyzer test because they didn't have the equipment with them. Further, they did not do a "straight line test" because he could clearly observe that they were drunk.

30. I sought clarification from PW3 if a record of interview was done. He stated that he was not aware because he was not the investigating officer.
31. The prosecutor did not present any evidence in relation to the investigations carried out in this matter. There was no evidence as to whether the charge was put to the defend at the police station, and whether a record of interview was conducted. The prosecutor did not tender the seized alcohol as evidence, nor was there any evidence as to whether it was exhibited after it was seized from the defendant.

## **DEFENDANT'S CASE**

32. The defendant gave evidence under oath, and thereby, became a witness in his defence. I have considered his evidence in its entirety. A summary of his evidence is as follows.
33. The defendant gave evidence that on 2 January 2022 he was drinking alcohol at a friend's house situated at Meneng District, he had started drinking at 6am that morning. He was drinking "Pure Blonde" beer. He was drinking with Anvickson Jeremiah, who later asked him to go to Baitsi District to visit his uncle. Anvickson drove the defendant, and the defendant was carrying one closed can of "Pure Blonde" beer. He did not drink from it, and did not open it at any point in time. On their way to Baitsi District they came across the blitz. The driver spoke with the officers and told them that the defendant was to be dropped off at one Joram's house near boat harbor and the police let them go. They were stopped at the "Anibare Lodge" by police officers who were in a police vehicle. They were told to get off the bike and get into the police vehicle. They complied. At the police station the police officers did not conduct any interview. Even up till to date the police have not done any interview. They were not given any documents when they were arrested and released. The defendant just found out about this charge this year or in December last year when Mr Adun gave him the Summons.
34. In cross-examination, the defendant admitted that when they were stopped by the police officers at the "Expat Lodge", the police officers had informed them of the reasons of their arrest.
35. In re-examination, the defendant clarified that the police informed them that the reason for their arrest was that they were drunk.

## **ANALYSIS**

36. The defendant is being charged for consuming alcohol while travelling in a vehicle as a passenger in contravention of Section 17(1)(d) and (2) of the *Naoero Roads Act 2017* ("the Act").
37. Section 17(1)(b) and (2) of the Act provides as follows:

### ***17 Drinking***

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

*(a) on a public road; or*

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

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

38. The elements of the offence are:

- i. The defendant
- ii. Intentionally
- iii. Consumed alcohol
- iv. While traveling in a vehicle
- v. As a passenger

39. The identity of the defendant is not disputed. Further, the defendant does not dispute travelling as a passenger on the motorbike. However, he is disputing the fact that the can of "Pure Blonde" beer was open. His evidence is that it was always closed at all material times and that he did not drink while travelling as a passenger.

40. I find that there are substantial defects in the manner in which investigations were conducted in this matter. The defendant was not informed of the charges against him at the police station. A record of interview of interview was not conducted as well up until now.

41. It took almost 23 months for PW1 to make his police statement. The charge was also filed almost 23 months after the date of incident. PW1 did not provide valid reasons for the delay in making his statement. Further, there is no evidence as to the reasons for the delay in the filing of the charges against the defendant. This is a minor offence. The investigations would not have been complicated. The charges should have been filed promptly, which was not done in this case.

42. There is no evidence before me as to whether the officer who seized the alcohol that was on the defendant at the time he was arrested exhibited it as evidence, nor was the alcohol that was seized tendered as evidence. This would have substantiated whether the can was open or not. This evidence is particularly important in this case due to the defects in the investigations, the delay in the filing of the charges, and the inconsistencies in the police statement and the oral evidence given by the prosecution witnesses.

43. The District Court has implied jurisdiction to permanently stay a trial for abuse of



process: see *POLICE (SA) v GRAY* [2003] SASC 15. Delay in filing of charges may amount to an abuse of process. I find that the delay in the filing of charges in this matter without any reasons is unreasonable, and coupled together with the defects in the manner in which the investigations were conducted in this matter it amounts to an abuse of process. The defects in this matter cannot be cured, and an order permanently staying the charges would be appropriate in this case. However, there is no need to permanently stay the charge because I also find that the prosecution has not proven its case beyond reasonable doubt, which I will expound upon below.

44. PW2 admitted that his police statement did not state that the defendant was holding a can of “Pure Blonde” beer, and PW3 also admitted that some of his evidence given during trial was not in his police statement. This gives rise to issues of credibility of the evidence given by them. The “Pure Blonde” can of beer was not exhibited nor was it tendered as evidence. The defects in the investigation and the delay in the prosecution of this matter creates substantial doubts on the credibility of the evidence. I find that there is insufficient evidence to substantiate the alleged fact that the can of “Pure Blonde” beer was open at the time of arrest. As a result of this I am unable to make an inference that the defendant was drinking from the “Pure Blonde” can of beer that he was holding when travelling as a passenger on a motorbike because there is no direct evidence that he was drinking from the “Pure Blonde” can of beer.

## VERDICT

45. For the foregoing reasons, I find the defendant not guilty of the charge and acquit him of it accordingly.

Dated this 4 day of October 2024.



Resident Magistrate

Vinay Sharma