**SUBMISSION TWO**

**2. The actions of Mr. Cutthrough are Assault**

2.1 My first sub-issue is that Actus Reus was present in Mr. Cutthrough’s actions.

S 10 of the Summary Offences Act 1981 states:

Every person is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding [$4,000] who assaults any constable, or any prison officer, or any traffic officer, acting in the execution of his duty.

2.1.1 It is very clear that in the facts of the case that Mr. Cutthrough punched and kicked both Constables. This would suffice alone as Actus Reus for assault under many forms, including the present case and the statute it relates, s 10 Summary Offences Act 1981.

2.1.2 The Actus Reus only examines the act of the assault. Under s 2 of the Crimes Act 1961 Assault is defined:

Assault means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose…

2.1.3 Mr. Cutthrough’s actions clearly are under “…applying or attempting to apply force to the person of another, directly or indirectly…” as he kicked and punched both officers.

2.2 My second sub-issue is that all aspects of Mens Rea were present in Mr. Cutthrough’s actions.

2.2.1 As Cooke P stated in Waaka v Police “As to s 10 of the Summary Offences Act, there is insufficient reason for not applying the approach in Millar. Accordingly we think that Mens Ream must go to all ingredients of the offence”. The offence being referred to is s 10 of the Summary Offences Act 1981. This includes whether or not Mr. Cutthrough knew that the two people he assaulted were Constables.

2.2.2 On this sub-issue the answer is quite clearly found in the facts of the case. The facts of the case specify that Mr. Cutthrough saw two Constables approaching on his property. He identifies them immediately as Constables. He does not specifically or explicitly state that he identified them as civilians or in civilian clothing but rather identifies them immediately as Constables. Furthermore, there was no clear display in the facts of the case that Mr. Cutthrough doubted the two persons on his property were Constables. If Mr. Cutthrough was to doubt that the two persons were Constables it is expected that there would have been some display of his doubt such as a question of their authenticity, requesting they display their badges or some other request to identify themselves as Constables. The Constables also clearly announced they intended to take Mr. Cutthrough to the Police Station and question him about the burglaries. Again, Mr. Cutthrough made no inquiries of the Constables authenticity. At this point Mr. Cutthrough entered into a state of shock, the situation escalated and Mr. Cutthrough begun to react aggressively. The Constables then placed Mr. Cutthrough under arrest. By this point it is very unlikely that Mr. Cutthrough was unaware that the two persons were Constables and had displayed no doubt. Due to Mr. Cutthrough displaying no doubt over the authenticity of the Constables it is the view of the Police that he was fully aware that the two persons were Constables.

2.2.3 The requirements of Mens Rea under s 10 of the Summary Offences Act 1981 also require that Mr. Cutthrough was aware that the Constables were in the execution of duty. As my co-counsel discussed on the first issue, as to whether or not the Police were in the execution of duty, it is the view of the Police that the acting Constables were in the execution of duty and that Mr. Cutthrough reacted as he did in willful blindness.

2.2.4 It is also the view of the Police that the judgment in Waaka v Police is inapplicable to this case as the circumstances surrounding the arrest in Waaka v Police were significantly different to those of the present case. In Waaka v Police the Constable took hold of a persons arm and told them that they are were not going anywhere. This was a matter of detainment not arrest as s 316 of the Crimes Act 1961 states:

It is the duty of every one arresting any other person to inform the person he is arresting, at the time of the arrest, of the act or omission for which the person is being arrested, unless it is impracticable to do so, or unless the reason for the arrest is obvious in the circumstances. The act or omission need not be stated in technical or precise language, and may be stated in any words sufficient to give that person notice of the true reason for his arrest.

When Mr. Cutthrough was arrested the arresting officer seized him by the arm whilst clearly telling him that he was under arrest, fitting with requirements of s 316 of the Crimes Act 1961.

2.2.5 Another distinguishing feature in Waaka v Police to the present case is that the incident in Waaka v Police occurred in a public place. In the present case Constables arrested Mr. Cutthrough on his property. The issue of the Constables arresting Mr. Cutthrough on his property is a significant issue in the present case. This suggests that there will be many inconsistencies surrounding the relevant authorities to both the present case and Waaka v Police.

2.2.6 It is submitted by the court that Mr. Cutthrough had Mens Rea of any form of assault.

2.2.7 S 2 of the Crimes Act 1961 states that the act of “…applying or attempting to apply force to the person of another, directly or indirectly…” must be done “intentionally” to constitute an offence.

2.2.8 It is the claim of Mr. Cutthrough in the facts of the case that he suffers from Claustrophobia and the fear induced at the thought of being in a prison cell because of his Claustrophobia was the cause for assaulting the Constables.

2.2.29 It is the view of the Police that Mr. Cutthrough assaulted the two Constables intentionally and not due to the fear caused by his Claustrophobia. Additionally we hold that Claustrophobia does not fit any justification or excuse for the actions of Mr. Cutthrough, as can be found in the Crimes Act 1961.

2.2.10 Intent is defined in the Buttersworths New Zealand Law Dictionary as:

Where the offender had previously decided to endeavour to bring about a harmful result that is proscribed by the criminal law, foresight of the practical certainty of such result being required.

The two main ingredients of intent are (a) the previous decision to act and (b) foresight of the results of the action.

2.2.11 Mr. Cutthrough contained both ingredients of intent as he had made the previous decision to act and had foresight of the consequences of his actions. The foresight of the results of his actions was present as even in a state of shock and fear it is still present that someone would be aware that “applying […] force to the person of another” would cause harm to that person. The other ingredient of intent, the previous decision to act, is also present. Mr. Cutthrough made the decision to act violently after being told he was under arrest and from this point he committed the assault.

2.2.12 It is the claim of Mr. Cutthrough that he suffers from Claustrophobia and the fear of being in a prison cell was his reason for reacting violently. The response of the Police to this is that Mr. Cutthrough’s circumstances are not in line with any justification or excuse found under the Crimes Act 1961.

Therefore, my overall conclusion is that the Actions of Mr. Cutthrough contained both the Actus and Mens Rea required to have committed an offence against s 10 of Summary Offences Act 1981 and that the decision of the Trial Court should be held.