**Assault**

Actus Reus

This section is quite clearly committed the act of assault by punching and kicking the two officers. Assault under many forms is illegal in the eyes of the law, in many forms, including s10 of Summary Offences Act. The act of assault is defined under interpretation in section 2 of the Crimes Act 1961 as:

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; and to assault has a corresponding meaning

Charlie’s actions clearly fit the Actus Reus as in the facts of the case he clearly kicked and punched both of the police officers, which is “applying or attempting to apply force to the person of another, directly or indirectly.” Where the turning point of the case lies though is whether or not it was done “intentionally”, or Charlie had the Mens Rea factor present.

Mens Rea

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 rea must go to all the ingredients of the offence.” This includes whether or not Charlie Cutthrough knew that the two people he assaulted were police officers or not. On this issue I think the answer is quite clear. The facts of the case specify that Charlie saw two Police Officers, not choosing to identify them along the lines of civilians or in civilian clothing but he originally identified them as police officers. There was also no clear display by Charlie that he doubted that the two men were police officers in that he did not question their authenticity, ask them to display their badges or request that they clearly identify themselves as police officers by any other methods. The two Police Officers also clearly announced that they intended to question him and take him to the Police Station. Again, Charlie did not question the authenticity of the Police Officers. At this point Charlie is described as having gone into a state of shock and begun to react aggressively. The Police Officers then arrested Mr. Cutthrough. By this point it is extremely unlikely that Mr. Cutthrough was unaware the two men were Police Officers. He then assaulted the two police officers and the facts of the case show that he clearly showed no doubt that the two men were Police Officers at the point he assaulted them. In *Waaka v Police* the conviction under s 10 of the Summary Offences Act was partly appealed and reduced to Common Assault. The issue here was not whether or not the appellant knew that the Police Officer was actually a Police Officer but whether or not the Appellant knew that the Police Officer was acting in the execution of duty. This is another issue that arises in terms of Mens Rea under section 10 of the Summary Offences Act 1981. Firstly, I argue that Mr. Cutthrough was aware that the Police Officers were acting in the Execution of Duty. As my co-counsel discussed on the first issue----

Secondly, Waaka v Police is not applicable in this case as the Police Officer took hold of a persons arm and told them that they are not going anywhere. At this point he was not acting in the Execution of Duty. As is stated under section 316 of the Crimes Act 1961:

“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.

Another distinguishing feature in the present case from Waaka v Police is that the incident in Waaka v Police occurred in a public place. In the present case the Police Officers arrested Mr. Cutthrough on his property, which is a huge issue in the case, indicating that Waaka v Police sets a very weak line of precedence, if any, to be considered.

The next sub-issue is the Mens Rea relating to the actual act of the Assault. As is determined in R v Venna, Mens Rea in Assault under New Zealand Common Law is sufficed by intention and recklessness.

Intention is defined in Butterworths New Zealand Law Dictionary as “Where the offender had previously decided to endeavor to bring about a harmful result that is proscribed by the criminal law, foresight of the practical certainty of such result being required.” ----

The accepted New Zealand Common Law meaning of Recklessness is known as “subjective recklessness”, first used in the English case R v Cunningham, was defined in a UK Law Commission Working Paper:

“A person is reckless if, (a) knowing that there is a risk that an event may result from his conduct or that a circumstance may exist, he takes that risk; and (b) it is unreasonable for him to take it having regard to the degree and nature of the risk which he knows to be present.”

This meaning is also contains the same two main ingredients, foresight and taking the risk, as is present in both the Butterworths New Zealand Law Dictionary, defining recklessness;

“The wrongful disregard by the offender of a risk where he or she has foresight of the probable consequences of his or her conduct”

and the English Oxford Dictionary, defining Recklessness:

“Heedless of danger or the consequences of one’s actions; rash or impetuous.”

This suggests that the ordinary meaning of ‘recklessness’ and a ‘reckless’ action is consistent with the legal understanding in New Zealand. This makes it implausible to suggest