

CITATION: *Veronica Lalara v Justin Anthony Firth* [2023] NTLC 20

PARTIES: Veronica LALARA  
v  
Justin Anthony FIRTH

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO(s): 22137772

DELIVERED ON: 21 April 2023

DELIVERED AT: Alyangula

HEARING DATE(s): 4 April 2023 Alyangula Local Court

DECISION OF: Judge David Woodroffe

**CATCHWORDS:**

Criminal Law – lawfulness of arrest – *Police Administration Act 1978* ss 127(1), 127(3) – failure to inform of arrest, “whether practicable in the circumstances” – *Evidence (National Uniform Legislation) Act* ss 138(1)(a), 138(1)(b), impropriety or illegality improperly obtained evidence, ‘inconsistent with minimum standards of law enforcement’.

*Criminal Code Act 1983*

*Police Administration Act 1978*

*Evidence (National Uniform Legislation) Act 2011*

*Ridgeway v The Queen* (1995) 184 CLR 19

*The Queen v EM* [2003] NSWCCA 374

**REPRESENTATION:**

*Counsel:*

Respondent: Mr Bach

Applicant: Mr McDonald

*Solicitors:*

Police: DPP

Defendant: NTLAC

Decision category classification: B  
Decision ID number: [2022] NTLC 20  
Number of paragraphs: 50

IN THE LOCAL COURT  
AT ALYANGULA IN THE NORTHERN  
TERRITORY OF AUSTRALIA  
No. 22137772

BETWEEN  
Veronica LALARA  
Applicant  
v  
Justin Anthony FIRTH  
Respondent

**APPLICATION BY DEFENDANT FOR EXCLUSION OF EVIDENCE**

**REASONS FOR DECISION**

(Delivered 21 April 2023)

JUDGE WOODROFFE

1. The defendant Veronica Lalara is charged with 8 offences on Information and Complaint dated 10 December 2021 of having committed the following offences at Angurugu Township on 6 December 2021 by;
  1. Going Armed in Public with a fishing spear and aluminium chair leg contrary to s. 69 of the *Criminal Code Act*
  2. Resisting Police in the execution of his duty contrary to s. 158 of the *Police Administration Act*
  3. Aggravated Assault of Eliza Muminyamanja contrary to s. 188(1)(2) of the *Criminal Code Act*
  4. Possession of an offensive weapon, namely an aluminium chair leg contrary to s. 8(1) of the *Weapons Control Act*
  5. Resisting Police in the execution of his duty contrary to s. 158 of the *Police Administration Act*
  6. Aggravated Assault of Police Officer, senior constable Rohan Wake contrary to s. 189A of the *Criminal Code Act*
  7. Aggravated Assault of Police Officer, constable Danielle Best contrary to s. 189A of the *Criminal Code Act*
  8. Behaved in a disorderly manner in a police station contrary to s. 47(c) of the *Summary Offences Act*.

2. On 5 April 2023 a hearing commenced at the Alyangula Local Court, where the defendant objected to the admissibility of the evidence of senior constable Rohan Wake<sup>1</sup>, and Constable Dani Best<sup>2</sup> including their body worn camera recordings<sup>3</sup> as well as photographs concerning seized weapons and officer Wake's injuries<sup>4</sup>. The items were marked for identification.
3. The defence objection was made pursuant to both s 138(1)(a) of the *Evidence (National Uniform Legislation) Act* to 'exclude improperly or in contravention of Australian law' illegally obtained evidence and s.138(1)(b) 'or in consequence of an impropriety or a contravention of Australian law'.

### **The evidence on the *voir dire***

4. Senior constable Wake's testimony was that on 6 December 2021 he and his partner constable Best had been called out due to a community disturbance at Angurugu. It is not disputed that there was occurring that day a disturbance involving a large numbers of persons and weapons.
5. After crossing the bridge at the western end of the township in their police vehicle, the officer sighted Veronica Lalara who appeared agitated, walking in public carrying a wooden handled three metal-barbed spear (of approximately 3 metres length) and a metal chair leg.
6. After calling for her to 'stop', three or four times he alighted and removed from her grasp each of the weapons. She screamed in her first language and then in English, saying '*mother-fucker*' before continuing to walk away. The officer returned to secure the weapons in the police vehicle.
7. His evidence was that he did not intend to arrest the defendant at that time, as he needed to assess the ongoing community disturbance through roving patrols and retrieval of weapons; and that the incident had been recorded on his body worn camera. He did intend to arrest the defendant at a later time and location.
8. Later that day the officers attended Lot 641 Angurugu, having sighted an armed male. Following an unsuccessful engagement with the armed male who ran away, senior constable Wake received a bundle of a dozen spears from another two police officers and was in the process of taking them back to the police vehicle.
9. He then sighted the defendant in the backyard of Lot 641 appearing dishevelled, agitated while swearing and was carrying a weapon of a metal chair leg. His evidence is that he told her that her behaviour would get her locked up. Constable Best's evidence was that she concerned the defendant was armed and had said 'Oi' and that her partner said, '*If you keep going, you're going to get locked up*'.

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<sup>1</sup> MFI P1 camera recording of senior constable Wake at Angururu township.

<sup>2</sup> MFI P3 camera recording of constable Best at Angurugu township.

<sup>3</sup> MFI P4 camera recording of constable Best at Angurugu police station.

<sup>4</sup> MFI P2 photos of injuries of senior constable Wake.

10. MFI P1 shows the defendant walking away from senior constable carrying the metal chair leg and throwing it in the direction of the house hitting a camp dog.
11. Senior constable Wake determined that there being a clear continuation of offending, he then made a decision to arrest. The decision to arrest was not communicated to Veronica Lalara by either officer.
12. Constable Best evidence was that having seen her partner moving up in the direction of Veronica Lalara, that there was a mutual decision to restrain and disarm her as it was necessary, in her view for the protection of community members. Though the mutual decision to arrest the defendant was unspoken, it was based on the unspoken body language of the senior constable and an instinctive policing response to his bodily movements.
13. Officer Wake firstly secured the defendant's arm to one side and Officer Best held the other arm. It is the evidence that this arrest took place some 25 metres from where they had left the police vehicle that was situated near the driveway entrance of Lot 641 and that she had to be escorted back to the cage at the rear of the vehicle.
14. His evidence is that Veronica Lalara immediately 'behaved poorly, in dropping her weight so as to be situated on the ground, and he was required to use an underarm lift in order to bring her back to her feet, and she resisted all the way back to the police vehicle with her bodily movements.
15. Constable Best's stated the defendant initially cooperated in walking for a few seconds before dropping her weight causing her to go out of her grasp. She also did not comply in being escorted by bracing back against the officers and using her feet to push against tyres situated on the ground in the yard. MFI P3, shows their passage through the yard and the constrained environment of the side wall, tyres on ground and culverts in the driveway.
16. Veronica Lalara is heard during the escort in English to say, '*Don't fucking kick me*'. The senior constable evidence is that he did not strike her, and 'If I did connect at all it would be accidental with the knees'. Constable Best's evidence differs that Wake used his leg to destabilise her in order to keep her moving towards the vehicle.

#### **The assaults on the police officers**

17. Constable Best says the defendant's behaviour escalated at the police caged door in not complying, by dropping her weight, bracing her feet against the cage door. On the recordings the defendant is heard to say, '*Don't touch me*' and '*let me get in myself*'.
18. The footage of MFI P1 shows the defendant when in the cage, making a bodily movement in throwing a punch at senior Constable Wake that does not connect and the grabbing his uniform front collar and throat that dislodges the camera to the floor. His evidence is that he then pushed the defendant to her face to in order get space to shut the cage door. He later adopted in evidence the description of the push as a 'palm strike'.
19. On the cage door being shut, the defendant spat in the direction of Constable Best and that the spittle was blocked by the 'spit shield' that was situated on the caged door.

20. It is at this stage that Veronica Lalara is told of her arrest by senior constable Wake who says, 'You're in trouble under arrest for offensive weapon. You're going to gaol for Christmas'.

#### **Angurugu Police Station**

21. Constable Best's evidence that at the sally-port of Angurugu police station she spoke quietly to Veronica Lalara who remained in the police vehicle cage as a means of showing respect and asked her to 'come inside to tell her story' and held her head for her not to hit her head on exiting the cage. Veronica Lalara then says, 'Don't fucking touch me.' Senior constable Wake is heard to respond on the recording MFI P4, 'Don't touch ya, I will touch ya'. And further 'You'll be wrestled out as you got wrestled in'.

#### **Failure to state 'arrest'**

22. The defendant contends that her purported arrest in the backyard of Lot 641 was in contravention of Australian law being the failure to comply with s. 127(1) of the *Police Administration Act* as she was not informed by either police officer of the reasons for her arrest.

Section 127(1) of the *Police Administration Act* provides that *a member shall inform a person at the time of her arrest or as soon as practicable thereafter of the offence for which he is arrested.*

Section 127(3) provides, *Subsection (1) does not apply to or in relation to the arrest of a person: (a) if that person ought, by reason of the circumstance in which he is arrested, to know the substance of the offence for which he is arrested; or (b) if the person makes it impracticable by reason of his actions, for the member effecting the arrest to inform him of the offence for which he is arrested.*

23. The evidence of the Senior Constable was that there was a number of reasons why it was not possible to inform Veronica Lalara immediately on her arrest during her escort due to her being a heavy-set woman, who was struggling over ground that wasn't flat and his concentration was on not falling and taking everyone to the ground.

24. The body worn recordings vividly illustrate the fluid and potentially volatile situation that existed prior and during the defendant's arrest and the officers' vulnerability. It was a situation of a large number of persons in the vicinity and the police previous seizure of spears as well as immediately prior encountering an armed male at Lot 641 who had run away and there was nothing to indicate he could not return to the location.

25. The Senior Constable's evidence was of the tactical necessity to remain un-handcuffed to the defendant, for both her and the officers' safety. As a police officer of 18 years' experience, he was concerned that the crowd could turn on them if the defendant was informed of her arrest.

26. I do find on the evidence that it was not practicable by police to immediately inform the defendant of the reason for her arrest given the ongoing community disturbance that was occurring.

27. In any event, I am also satisfied that the defendant ought to have known of the substance of her arrest, as she previously had been disarmed by police for carrying the same type of

weapon being a metal chair leg and a spear, and had been consistently been warned of going to the 'lockup' of being arrested for her behaviour.

28. This ground of objection is not made out and the police were exercising their lawful powers of arrest under s 127 of the *Police Administration Act*.
29. Thirdly that the senior constable Wake did not act in the execution of his duty by kicking the defendant while she was being escorted to the police vehicle.

#### **'Lawful execution of duty'**

30. The defendant contended that the evidence of senior constable Wake should not be admitted as he was not acting in the lawful execution of his duty in having 'kicked' the defendant, that is said to arise from her expressed complaint on recordings, 'You fucking kicking me'. The officer's evidence was that he has no recollection of kicking her and if there had been contact, it was accidental.
31. In relation to this point, I prefer the evidence of constable Best, who says that with the defendant being escorted to the cage, she had not cooperated with movement or standing and in bracing herself against each officer, or with her feet against the tyres situated on the ground, where Officer Wake had used his leg to destabilise her resistance. I do find that this is what did occur and that use of force was not an unreasonable or unnecessary use of force to ensure her escort compliance to vehicle and it was reasonable force consistent with the lawful execution of the officer's duty. This objection by the defendant is not made out.
32. The movement of the defendant into the cage had been difficult, following her grappling and bracing against the cage door with both officer, she was described as a heavysset woman requiring her to be lifted into the cage by the senior constable, the BWF did not support the allegation of the prisoner being thrown or 'dragged' into the cage.
33. Concerning the use of force by senior constable Wake being a push to the side of the face, or a 'palm strike' while she was seated in the rear of the cage.
34. The sequence of the evidence does show that the defendant was grappling with the senior constable's arms and then to the front collar of his shirt. There is no clear footage of the palm strike but it is conceded by both officers that it occurred. It is the evidence by the senior constable that it was done in order to create distance between the defendant and himself. I note that this occurred when the cage door was open and both officers were in close proximity and necessary to ensure their and the prisoner safety. I do find that the sequence of events of the strike followed aggressive physical contact by the defendant and that was not unnecessary or unreasonable force and as such, it was reasonable force consistent with the lawful execution of the officer's duty.

#### **'Improper use of language by police'**

35. The defendant contends that the language used by senior constable Wake on various occasions to her was offensive and demeaning, falling below the minimum standards society expects of law enforcement amounting to an impropriety.

36. Commencing with the initial arrest of taking hold of the defendant's arm and her saying 'Can you let me go?' and the officer's reply, 'You had your chance, carrying on like a wild animal'. Also during the escort to the vehicle, officer Wake's response to her saying, 'I know your face' replying. 'Good, I know your face, I couldn't miss it', was again offensive and demeaning.
37. Lastly, in his comment following the defendant's saying to constable Best, 'Don't fucking touch me.' Responding to her 'Don't touch ya, I will touch ya'. And further 'You'll be wrestled out as you got wrestled in'.

### **Section 138(1)(b) of the Evidence (National Uniform Legislation) Act**

38. As stated the defendant objects to the evidence under s 138(1)(b) who has the onus of proof on the balance of probabilities of establishing that the police evidence was a consequence of an impropriety and not to be admitted. The onus of proof then shifts to the prosecution to show the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.
39. The Court must take into account those matters are set out in s. 138(3) of *Evidence (National Uniform Legislation) Act*;
- (a) The probative value of the evidence;
  - (b) The importance of the evidence in the proceeding;
  - (c) The nature of the relevant offence, ...and the nature of the subject matter of the proceeding;
  - (d) The gravity of the impropriety or contravention;
  - (e) Whether the impropriety or contravention was deliberate or reckless
40. As the High Court outlined in *Ridgway v The Queen* (1995) 184 CLR 19 the considerations of impropriety, of 'firstly it is necessary to identify what, in a particular context, may be viewed as "the minimum standards which a society should expect and require of those entrusted with powers of law enforcement". Secondly, the conduct in question must not merely blur or contravene those standards in some minor respect, it must be "quite inconsistent with" or "clearly inconsistent with" those standards.
41. The cross examination of the senior constable was that he did not consider that the description of the defendant '*carrying on like a wild animal*', as being offensive to her and was an accurate description of her behaviour that he stood by.
42. The gravity of the alleged impropriety is to be assessed by the seriousness of the departure of fundamental rights, policing practices, codes of conduct, and obligations. A breach of a police code of conduct does not necessarily mean that evidence is rejected *R v EM* [2003] NSWCCA 374.



43. The comments by the officer, were not wise nor helpful to the situation, and showed a lack of understanding of the historic context encountered by Aboriginal people in the use of such language. It was not language that was akin to that used by constable Best, a local and community raised police officer who communicated in a respectful manner to the defendant at the Angurugu police station.
44. The language used by the senior constable Wake was impolite. However, I do find that the officer's comment was directed to describing the behaviours of the defendant as he saw them, and not to her person.
45. In communication with the public the minimum standards which a society should expect and require of police should not be one of hyper-sensitivity nor one that is disregarding of verbal abuse. The language used by the officer occurred in a tense and volatile situation and that is regrettable but in my view does not reach the required test of 'quite inconsistent with' or 'clearly inconsistent with' law enforcement.
46. The officer's secondary comments in reply to the defendants visual recognition of him, being, '*Good, I know your face, I couldn't miss it*' was not intended to be offensive and rather he was now alert to her identity for her offending. Given the ambiguity of the comment, I do not find that the defence, who has the onus of proof, has raised evidence to the requisite standard of proof to amount to an impropriety.
47. Lastly, the senior constable comments at the Alyangula police station to the defendant whilst she was held in the police cage of '*Don't touch ya, I will touch ya*' and '*You'll be wrestled out as you got wrestled in*', is and I do find is an impropriety contrary to the acceptable standards of policing for the safe custody of persons in police custody and their escort. The officer's words were a deliberate impropriety and were provocative, immature and displays an inappropriate attitude to the safe custody and operations of policing, particularly in regard to taking people into custody.
48. I do not consider that individual impropriety would in combination with the other alleged improprieties or purported unlawful arrest would be sufficient as to warrant ruling the inadmissibility of the evidence concerning the events in Alyangula Township and Lot 461.
49. The onus of proof now shifts to the prosecution to establish the desirability of admitting the evidence regarding Alyangula Township. I am not so satisfied of the admission of the evidence given the seriousness of impropriety for the safe custody of all prisoners and therefore both officer's evidence and recordings will not be admitted to include the comment and events from the removal and escort of the defendant to cell.
50. Accordingly the defence application under s.138 of the *Evidence (National Uniform Legislation) Act*, apart from the evidence just described, is dismissed and the evidence is admitted.
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