

CITATION: *Veronica Lalara v Justin Anthony Firth* [2023] NTLC 21

PARTIES: Veronica LALARA  
v  
Justin Anthony FIRTH

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO(s): 22137772

DELIVERED ON: 3 October 2023

DELIVERED AT: Alice Springs

HEARING DATE(s): 4 April 2023 & 21 July 2023

DECISION OF: Judge Woodroffe

**CATCHWORDS:**

Criminal Law – Criminal Code Act - Weapons Control Act – going armed in public – fishing spear– ‘reasonable firmness and courage’ – whether a chair leg is an offensive weapon - ‘adapted to cause fear or injury – Assaults on Police – Resisting arrest - ‘lawful execution of duty’ – use of force – language to Aboriginal defendant

*Criminal Code Act*

*Weapons Control Act 2001*

*Police Administration Act 1978*

*Evidence (National Uniform Legislation) Act 2011*

*Parmbuk v McMaster (2003) 195 FLR 176*

*Tomlins v Brennan (2006) 18 NTLR 80*

*R v Carrol [1975] 2 NZLR 474*

*R v Conti [1958] VR 547*

**REPRESENTATION:**

*Counsel:*

Applicant: Mr McDonald

Respondent: Mr Bach

*Solicitors:*

Police: DPP

Defendant: NTLAC

Decision category classification: B

Decision ID number: [2023] NTLC 21

Number of paragraphs: 40

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

BETWEEN

Veronica LALARA

Applicant

AND:

Justin Anthony FIRTH

Respondent

### REASONS FOR DECISION

(Delivered 3 October 2023)

JUDGE WOODROFFE

1. Veronica Lalara pleaded not guilty to eight charges alleged to have been committed at Angurugu Township on 6 December 2021 for Going Armed in Public contrary to s. 69 of the *Criminal Code Act*; Resisting Police in the execution of their duty contrary to s. 158 of the *Police Administration Act* on two occasions; Assaulting a Police Officer contrary to s. 189A of the *Criminal Code Act* on two occasions; Aggravated Assault contrary to s. 188(1)(2) of the *Criminal Code Act*; Possess an offensive weapon contrary to s. 8(1) of the *Weapons Control Act*, and disorderly behaviour in a police station contrary to s. 47(c) of the *Summary Offences Act*.
2. The hearing commenced on 5 April 2023 at the Alyangula Local Court, where the prosecution case consisted of two witnesses being senior Constable Rohan Wake and Constable Dani Best.
3. A voir dire was also held as part of the hearing and following my ruling on 21 April 2023, the evidence of the Angurguru camera recording, being MFI P3 camera recording of Constable Best in Angurugu was ruled inadmissible. The following evidence was admitted: Exhibit P1 camera recording of Senior Constable Wake; Exhibit P2 photos of injuries of Senior Constable Wake and Exhibit P4 camera recording of Constable Best.
4. Both officers body worn camera's captured the majority of the incident and police interactions with the defendant.
5. On 21 July 2023, the hearing continued when the defence closed its case, and submissions were made and adjourned for judgment today the 3 October 2023.

6. The prosecution bears the onus of proof to prove each charge and their elements and each circumstance of aggravation beyond a reasonable doubt.
7. Mr McDonald for the prosecution properly concedes, that there is no evidence concerning count 3 of an allegation of an aggravated assault on Eliza Muminyamanga and I agree that offence is not proven and the defendant is not guilty and the count 3 is dismissed. It is also conceded that there is no evidence concerning count 8 of disorderly behaviour at the Angurugu police station and that offence is not proven and the defendant is not guilty and count 8 is dismissed.
8. Mr Bach for the defendant concedes there is no dispute that on 6 December 2021 there was a community disturbance at Angurugu involving a large numbers of persons and weapons.
9. Concerning count 1 of going armed in public, the evidence of both officers and the supporting BWC shows Veronica Lalara crossing in front of the police vehicle walking in the direction of houses holding a three prong metal fishing spear and aluminium chair leg.
10. The senior constable's testimony was that he called out to the defendant 'stop' three times and she continued to walk away. His camera shows him approaching her and reaching for the weapons where she says 'Don't touch it', the officer says 'what are you doing, stop and talk to me'. She replies loudly 'I'm trying to stop my son, he didn't listen to me' moving the spear from one side of her body to the other, and in doing so keeping them away from the senior constable. The officer repeats 'stop and talk' before taking the weapons by pulling them from her grasp. She then speaks in Anindilyakwa language and then English 'you're a mother-fucker' and walks away. Police decided not to arrest at that moment due to the community disturbance.
11. I am satisfied that both of the first two elements of count 1 are made out that Veronica Lalara was armed in public, and the spear and chair leg was available for use to injure. Mr Bach submits as in *Parmbuk v McMaster* (2003) 195 FLR 176 the prosecution has not proved the third element being the manner in which the defendant goes armed in public such as to cause fear to a person of reasonable firmness and courage. He contends there is nothing in the manner of her holding of the weapons that would cause fear and that a person of reasonable firmness and courage would have the characteristics of an Aboriginal person of that community, where there is a greater affinity with the use of such spears.
12. Ex P1 shows the manner of how the defendant is moving or going about the Angurugu community, she is holding weapons, she is purposeful, she is striding through an area between the streets and houses away from police when asked to stop and talk, she continues to walk away saying 'I'm just trying to stop my son he didn't listen to me'.
13. I do not find that this was an innocuous situation of everyday community life of going with a traditional spear for fishing, hunting or lawful purpose of cultural/ceremonial

activity. If the purpose as is contended by the defendant of having the weapons for safekeeping from her son or others, her actions are not consistent with that purpose in not presenting them to police when the opportunity arose but rather purposely withholding them.

14. I agree that a person with reasonable firmness and courage in the community of the defendant would have familiarity with a fishing spear or a chair leg, the surrounding circumstances at the time was such that there was a large community disturbance, requiring the presence of a number of police. I do find that the defendant to go so armed in that context of a community disturbance would cause fear to a person of reasonable firmness or courage. The footage, reveals the senior constable immediately after disarming the defendant immediately reassuring passers-by 'no one is to carry weapons'.
15. I am satisfied the prosecution has proved all elements of the count 1 to the requisite standard of proof and the defendant is found guilty.
16. Moving to count 4 the possession of an offensive weapon, the evidence of both officers Best and Wake was that the defendant was seen on the second occasion at Lot 641, armed with an aluminium chair leg, the body worn footage shows it was 40 cm long and she then throws it at a house, near a camp dog. The defence submits that there is no evidence to substantiate that the chair leg was an 'offensive weapon' under the *Weapons Control Act* definition section, 'made or adapted to cause damage to property or to cause injury or fear of injury to a person'.
17. Justice Southwood in *Tomlins v Brennan* (2006) 18 NTLR 80 the well-known 'dog case' on whether a dog was an offensive weapon ' at [85] held 'the word adapted in this context means made suitable for or made suitable for or applicable to the purpose of causing injury or fear of injury to the person. At [48] in *R v Carrol* [1975] 2 NZLR 474 following *R v Conti* [1958] VR 547 it was held that 'offensive weapons fall into two classes (a) instruments which firstly may be constructed or used for one purpose only – attacking and (b) instruments which are adaptable for inflicting injuries but have other uses and are only offensive if carried on the occasion in question, with the intention to use them for the purpose of attack solely or among others'.
18. This is such a situation, though the primary state of a chair leg is to support a chair frame and person, or as a broken piece of furniture. The defendant's actions shown on the body worn footage of her walking through a hole in the fence and gesturing and yelling to another group of persons in Anindilyakwa language and then in English and says 'he's the one' and officer Wake saying to her, 'Your going to get locked up'.
19. Veronica Lalara is next seen walking and yelling in the direction of the fence line while holding a the chair leg before throwing it. Accordingly I do I find that the chair leg has been adapted by the defendant with her use of possessing by carrying for the purpose of causing fear or injury to others who were present nearby.

20. I am satisfied that the prosecution has proved all elements of the count 4 to the requisite standard of proof and the defendant is found guilty.
21. The remaining charges all share the common element of police 'acting in the lawful execution of his or her duty', as it relates to the two distinct periods of firstly prior to attending Lot 641 on the roadway with count 2 of resisting police with the seizure of the spear and chair leg. Then secondly counts 5, 6, and 7 at Lot 641 with the second interaction and subsequent arrest, of resisting police, Assaulting Police officer Wake and Assaulting Police officer Best.
22. I ruled previously the senior constable had a lawful power of arrest, under s. 127(1) *Police Administration Act*, for the possession of the weapon offence, though her arrest was not communicated to her. The evidence of both officers was that Wake was closest to the defendant and first to reach her and took hold of her arm. Officer Best then held the other arm. The evidence of Wake is that the defendant was not handcuffed as a tactical necessity.
23. The defendant being some distance away from the police vehicle had to be escorted back to the cage at the rear of the vehicle. Constable Best's evidence is that the defendant initially cooperated and walked with them for a few seconds before she dropped her weight causing her to drop out of her grasp. Senior constable Wake in examination was that she immediately 'behaved poorly, in dropping her weight so as to be situated on the ground. This is corroborated in the recording 'can you let me go' before dropping to the ground. The footage, shows both officers lifting her to a standing position.
24. Both police officer's evidence is reliable and consistent of the defendant pushing backwards and Best refers to the defendant using her feet to brace against a 4wd tyre and rim lying on the ground. Constable Best's evidence is that while at the back of the police vehicle, Veronica Lalara bracing her feet against the caged door.
25. It was put in cross examination to the senior constable that he had deliberately kicked the defendant. There is corroboration of Veronica Lalara's saying this on audio. The officer's evidence was that he did not kick her at all, he says 'If I did connect at all it would be accidental with the knees'.
26. Exhibit P3 Best's camera, the words 'Don't fucking kick me', is heard immediately following the moment of the defendant bracing her feet against the tyre. I prefer the evidence of constable Best who says that she saw Wake use his leg to destabilise the defendant in order to keep her moving towards the vehicle.
27. I do not find that the use of force by the officer was unreasonable in the circumstances to ensure compliance of the defendant to move forward during her escort on being arrested.
28. Next in time when the door is open at the back of the vehicle, the defendant is heard to say 'wait, I want to go myself', before being bodily lifted. It was put in cross examination

of Officer Wake that he had dragged or thrown in to the back of the cage and this was disputed. The footage does not show anything of that description rather the defendant being lifted up and sitting in the cage and her legs moved. I do not find that the defendant was thrown or dragged.

29. Officer Wakes evidence was that Veronica Lalara when inside the cage grabbed with her hand his uniform front collar and throat. The displaced camera shows Veronica Lalara arm extended connecting with Wake's face and throat. Officer Best says, 'do not touch him', Wake saying 'Get off me' and the defendant 'Don't touch me'. Exhibit P2 of the photos of Officer Wake corroborates his injuries of bruising, marking and redness to his throat.
30. His evidence was that he pushed the defendant to the side of the face, or a 'palm strike' as it was later adopted. The senior constable's arm was also extended pushing and connecting the defendant and it was his evidence it was done in order to create distance between the defendant and himself. The defendant is next heard to say, 'Punching me, grabbing me'.
31. As the caged door is closing, the defendant is then seen to make a head movement forward. It was the evidence of Officer Wake that the defendant spat and that spittle was blocked by the spit shield on the rear of the cage door. Officer Best evidence in chief, was that she was unsure that the spit had connected with her. Her body worn footage reveals that there was no complaint by Best of being spat upon, whether in saying that to the defendant, Officer Wake, or in reference to other persons nearby.
32. Concerning the totality of evidence, it gives rise to a reasonable doubt that Constable Best was assaulted by the defendant by way of spitting and I find the charge is not proven and defendant is not guilty.
33. Concerning the remaining charges the defendant submits that the prosecution who has the onus of the proof has not proved that senior constable Wake was not acting in the lawful execution of his duty for;
  - i. His inappropriate comments made to the defendant during her escort to the police vehicle.
  - ii. By unlawful and unnecessary force to kick the defendant and that she was thrown or dragged into the back of the police cage and that she was punched inside.
  - iii. The defendant also submits on the evidence of this unlawful force, that defensive conduct has been raised and the assault by Veronica Lalara upon Senior Constable Wake was justified.
34. I find that both officers evidence was credible and reliable, and is corroborated by each other's testimony and the exhibited evidence of their respective body worn footage. With the single inconsistency in their evidence, I prefer the evidence of constable Best of the leg destabilising.

35. The actions of both officers was lawful in the arrest and escort of the defendant and use of force by the senior constable Wake to destabilise the defendant with his knee, the palm strike to the side of her face after being grabbed by the defendant to his throat and were was a reasonable use of force and that the officer was acting in the lawful execution of his duty.
36. I do not consider that there has been raised on the evidence the defendant was in acting in self defence in the grappling with Officer Wake, as she was aware that she was under arrest in police custody having been repeatedly warned, and her knowledge she was in their custody when she wanted to get into the cage by herself. Her actions of grappling with Officer Wake were not a reasonable response to her arrest or the lawful use of force required. There is no evidence that the defendant was under any misapprehension she was unlawfully detained.
37. Mr Bach submits again that the language used by Officer Wake of '*carrying on like a wild animal*', and the words '*Good, I know your face, I couldn't miss it*' where both offensive and demeaning to such an extent that the police officer was no longer acting in the execution of his lawful duty.
38. The senior constable's evidence was that his first comment was descriptive and accurate of her behaviour and not to her person, and the second comment was said in response to the defendant's own comment that he too knew her face and was not intended to be offensive but rather he was now alert to her identity.
39. The language used by the senior constable Wake could be considered impolite. The language used by the officer occurred in a tense and volatile situation. I do find that the officer's comments was such as to be directed to describing the behaviours and identity of the defendant and not intended for offense or abuse. I do not find that the language used by senior constable Wake was such that he was no longer acting in the execution of his duty.
40. I am satisfied that that the prosecution has proven to the requisite standard of proof beyond reasonable doubt that on 6 December 2021 at Angurugu the defendant did go armed in public with a three prong metal fishing spear and aluminium chair leg, also Resisting Police in the execution of their duties on both occasions, possession of an offensive weapon being a chair leg, assaulting Senior Constable Wake a police officer in the execution of his duty with the circumstance of aggravation, of harm and that the defendant Veronica Lalara is guilty on counts 1, 2, 4, 5, and 6.