CITATION:	*Manning v Wunungmurra* [2026] NTLC 9
PARTIES:	Marrianne Manning (NT Police) v Jennifer Wunungmurra
TITLE OF COURT:	LOCAL COURT
JURISDICTION:	CRIMINAL
FILE NO(s):	22427365
DELIVERED ON:	22 May 2026
DELIVERED AT:	Darwin
HEARING DATE(s):	27 April and 8 May 2026
DECISION OF:	Judge Woodroffe

CATCHWORDS:

CRIMINAL LAW – *Police Administration Act 2018* – drug search warrant – voir dire - suspected person – admissions - objective assessment of when suspect caution – s 140(a) administered caution – s 143 - reasonable fluency – Anunga Guidelines – understanding of caution

Police Administration Act *2018* ss 120B, 140 (a) and (b), 140

Evidence (National Uniform Legislation) Act 1995 ss 85(2), 90, 138, 139

Police General Orders Q1 and Q2

The Queen v Zebide Bonson [2019] NTSC 22

R v GP (2015) 35 NTLR 117

R v Deng [2001] NSWCCA 153

The Queen v Layt [2018] NTSC 36

The King v Woods [2023] NTSC 21

Gedeon v R [2013] NSWCCA 257

R v EM [2003] NSWCCA 374

Bunning v Cross (1978) 141 CLR 54

REPRESENTATION:

Counsel:

Prosecution:	Mr Corah (DPP)
Defendant	Ms Stewart (NAAJA)

Decision category classification:	C
Decision ID number:	[2026] NTLC 9
Number of paragraphs:	55

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22427365

BETWEEN:

Marrianne Manning (NT Police)

Plaintiff

AND:

Jennifer Wunungmurra

Defendant

REASONS FOR DECISION

(Delivered 22 May 2026)

JUDGE WOODROOFE

Reasons for Decision

1. These are my reasons for the voir dire held on 27 April 2026 and 8 May 2026 at Darwin. Jennifer Wunungmurra pleads not guilty to a count 2 of the possession of a trafficable amount of cannabis contrary to s 7A(1) of the *Misuse of Drugs Act 1990* ('Act') and count 3 the supply of a less than commercial quantity of cannabis in an indigenous community contrary to s 5D(1) of the Act. There was no count 1.

2. On the afternoon of 24 July 2024 police officers Lachlan Boiteau, Scott Pearson with four others attended Lot 153 Gapuwiyak with a drug search warrant s 120B of the *Police Administration Act 2018* ('PAA'). It was the first occasion for Constable Boiteau to be the primary holder of a search warrant. The foundation of the search warrant was based on 'community intelligence' and information received that morning of "…people at Lot 153 were selling cannabis".

3. He had not previously met Jennifer Wunungmurra or knew that she was a resident of Lot 153. On arrival he was the first officer to speak to her and asked her name and provide an explanation for the police's attendance and purpose of the search warrant. There followed a recorded walk through of the residence by the officer and with the accused providing keys to a locked bedroom and stating who occupied each room.

4. Shortly later outside the accused made admissions to questions stating, "I was selling a couple here in the tank" when there followed a police caution by the officer. A second recorded caution conducted by First Class Constable Pearson is relied upon to establish a lack of understanding by the accused and failure by police to properly caution the accused as outlined

in Police General Order Q2 and the 'Anunga Guidelines'. There being an absence of an interpreter for the accused as an Aboriginal language speaker and failure to have the accused repeat back the caution. It is submitted that this would amount to an impropriety concerning the admissibility of the admissions for the purpose of s 139 and s 138 of *Evidence (National Uniform Legislation) Act* 1995 ('ENULA').

5. Further objections are submitted concerning the non-compliance by police in respect of s 140(b) of the PAA, and the admissions would be unreliable under s 85 and further seek its exclusion under the 'fairness' discretion under s 90 of ENULA. There are also relevant considerations under s 143 of the PAA.

Search warrant

6. Exhibit P1 on the voir dire was the s 120B PAA dangerous drug search warrant dated 24 July 2024 for Lot 153 Gapuwiyak with authorisation to search:

   (a) That place;

   (b) Any person found on or in that place;

   .....

   (e) the property in the immediate control of a person referred to in paragraphs (b) (c).

Attendance at Lot 153 Galiwinku

7. Exhibit P2 was the body worn recording of Constable Boiteau's attendance and conversation with Jennifer Wunungmurra commencing when she was inside the front door and exiting carrying a tote bag.

8. The recording reveals that the main conversation takes place outside of the premises:

   B: Missus can you come back.

   W: Who me?

   B: Yes please, what's your name?

   W: Jennifer.

   B: Jennifer is this your house, Jennifer?

   W: mm hmm.

   B: Hey, I'm Lochie NT Police Dog Unit, how are you?

   W: Good thank you.

   B: [the officer shows the warrant] We got here a search warrant for your house [JW places on glasses] for dangerous drugs ok. That's me the warrant holder.

   W: mm hmm.

   B: Lot 153 Gapuwiyak, here JP signed off by telephone.

P: Jennifer can I get you to put your bag down [complies]. Is there anyone else inside, I'm just going to go thorough and just check no one else around?

W: Mah.

9. Jennifer Wunungmurra is requested to provide keys for locked room within Lot 153. She is then asked by Constable Boiteau "Jennifer do you want to come for a walk"? The two then walk through the house where the defendant identifies each room and its occupants. The entirety of the walk through was conducted in English. She indicated as follows:

#far right, bedroom with spare clothes – 'My sister for funeral'.

#Middle – her bedroom

#far left – unoccupied.

10. I did not hear evidence from the accused nor is there anything that I can reasonably infer from the recording to demonstrate that she felt compelled to accompany the police in the recorded conversation of the 'walk through' of the house and the provision of keys to police.

Police search warrant

11. Sub-section 120B(2) PAA provides police with the power to direct a person to remain at the place for as long as is reasonably required for the purposes of the search and that a person who is so directed is in lawful custody see s 120B(3) PAA.

12. On returning outside Constable Boiteau asks, 'Any drugs or anything you want to tell me about?'

W: umm

B: cause you'll get searched as well, so anything in your pockets…

W: Bayungu, Bayungu, nothing in my pocket. All I got is gambling money in my speaker.

I was going to card.

B: Do you understand what is happening Jennifer?

W: Yeah I know.

B: Were searching your house for drugs.

W: Yep (nods)

13. Constable Boiteau continues:

B: Is there anything in the house, we are going to find?

W: No. (shakes head).

B: Nothing.

B: Look nervous. I want to assure you…..... was based on what people told….

I smell cannabis in here. [gestures to the bag]

W: **'I was selling couple'. Here in the tank tank.**

14. The officer then provides a police caution as follows:

> B: ***You don't have to tell me anything, anything you do say or do may be recorded here (demonstration) okay and given in evidence alright?***

15. In respect of the first limb of the caution the defendant softly says "***Mah***" and nods her head. There is no reply to the second limb or for the accused to repeat back the caution.

16. I am satisfied that the words said by the accused amounted to admissions for the purposes of ENULA. The prosecution contends that the admissions are highly probative evidence given that is the only evidence linking the accused to the drug offences for which she is charged.

Police General Order Q2 and Anunga Guidelines

17. It is submitted on behalf of the accused that Police General Orders Q1 and Q2 and the Anunga Guidelines were of application and the failure to comply would amount to an illegality and/or an impropriety that the court should exercise its discretion to exclude the evidence of admissions as it was illegally or improperly obtained.

18. Jennifer Wunungmurra is a middle-aged Aboriginal woman (Yolngu) from Gapuwiyak. English would not appear to be either her mother's tongue. She did converse in the use of singular Yolngu words of 'mah' and 'bayungu' in response to police explanations or the question of '[do you have] drugs in your pockets "Bayungu, Bayungu, nothing in my pocket. All I got is gambling money in money in my speaker. I was going to card".

19. I am not assisted by any evidence of the accused or other independent evidence as to her comprehension lack thereof of English. On behalf of the accused, it is contended that the syntax and grammar of 'I was going to card', is indicative of Aboriginal English and that the accused was not as 'fluent in English as the average 'person'[1] of English descent.

20. On the voir dire Constable Boiteau's assessment of the accused was that 'she had a pretty good command of English'. Further it was the officer's prior experience in speaking with East Arnhem Aboriginal people and that he would rate her as 'having a high level of comprehension'. It was his evidence that at no times did he have any concerns as to her ability to comprehend what he was saying.

21. I am satisfied that on the basis of Constable Boiteau's observations, dealing and conversation with Jennifer Wunungmurra that she had appeared to have a reasonable fluency in English. My observations of the recording reveals that the accused was able to engage in discussions with police as to her understanding of the search warrant, the purpose of the search, participation in the 'walk through' and indication of occupancy for each room, and to seek clarifying questions of meaning of 'broad search'. Accordingly, there was no requirement for Police General Order Q2 3.1.3[2].

[1] The 'average person' of English descent is to be preferred over the phrase 'the average white person of English descent'.
[2] Requirement for an Aboriginal language interpreter.

22. The characteristics of the accused in paras 20 to 23 of this ruling are relevant to the issue of reliability of admissions under s 85(2).

Section 140(b) of the PAA

23. Section 140(b) provides as follows:

> Any questioning or investigating under s. 137(2) commences, the investigating member must inform the person in custody that the person:
>
> (a) Does not have to say anything but that anything the person does say or do may be given in evidence; and
>
> (b) May communicate with or attempt to communicate with a friend or relative to inform the friend or relative of the person's whereabouts.

24. This did not occur and the accused has established that there was non-compliance by Constable Boiteau of the requirement of s 140(b) PAA and as such the onus shifts to the prosecution to show that the admissions are admissible.

25. Concerning the failure to provide the accused an opportunity to contact a relative or a friend it was Constable Boiteau's testimony that it was not practicable to do so. My observations of the recording show that Constable Boiteau was at pains to advise the accused that the drug search of the residence would be very quick and that they would not make a mess and be on their way. At this time the officer was also aware that the accused had been intending to go to a card game.

26. The additional purpose of ensuring a friend or relative is aware of the person being in custody is to enable communication in order to receive advice from a friend or relative to answer questions or to participate in an investigation *The Queen v Zebide Bonson* [2019] NTSC 22.

27. His Honour Hiley J in *Bonson* excluded the evidence of admissions in that case due to illegality and impropriety under failures under s 140(a) and (b) the failure of a meaningful caution and its delay, the lack of an interpreter, and the failure to contact or a friend or relative where it was available.

Section 143 PAA

28. Later outside the dwelling on the body worn recording of First Class Constable Pearson he administered a second police caution.

> *P: So step one, were doing the search warrant. So were going to search the house and search that one (freight container)*
>
> *W: But I don't know about that one(point same direction) because I wasn't here and I don't much go there?*
>
> *P: Oh that's alright. Whereabouts would a key be kept if there was a key?*
>
> W: Mah, yes.

P: was administered by officer Pearson. was spoken to and secondary caution was administered by to the defendant and no further admissions were made by the accused. During the search of Lot 135 police located and seized $9500, multiple clip seal bags containing the drug cannabis empty clip seal bags and scales and empty medical cannabis container.

Section 85(2)

29. The consideration of s 85(2) provides that an admission is not admissible unless the circumstances in which it was made were such as to make it unlikely that the truth of the admissions were adversely affected.

30. The accused's personal characteristics as previously outlined was as a bilingual Aboriginal woman an Aboriginal language and substantially proficient in English. I would not consider the failure of the legislative[3] or procedural[4] in respect of her language capabilities in creating any impropriety or illegality. There was no evidence to show the accused had any other vulnerabilities indicative of 'gratuitous responses' in questions to police; to the contrary she was able to make denials to questions or seek clarification. The admissions "I was selling couple, here in the tank, tank", followed Constable Boiteau's statement that he could smell cannabis emanating from the accused's tote bag.

31. There was no such impairment due to her language proficiency or her personal characteristics were such as to impair her ability to make a rational decision.[5] As such I do not find that their truth was adversely affected to be excluded under s 85(2) E(NUL)A.

Section 139

32. Ms Stewart further contends that the police were obligated to provide a caution at the outset of their arrival given the presence of the accused at the subject place of the search warrant. Her mere presence should have provided Constable Boiteau with a reasonable suspicion that the accused was a person suspected of having committed a criminal offence. Accordingly a caution should have been administered to the accused under s 140(a) and (b) of the PAA and in accordance with Police General Order Q1. Therefore the pre-caution questioning of her name, residency, discussion of room occupancy and possession and presentation of the house keys would be inadmissible under s 139(2)(a),(b),(c).

33. Mr Cobas for the Crown contends to the contrary that the objected pre-caution questioning and responses were part of the warrant holder's explanation of the nature, purpose and what was to happen during the drug search. As outlined in the terms of the search warrant search the house, persons present, and property immediately in her control. The warrant holder is authorised under s 120B PAA to direct a person to remain at the place for the purpose of the search of the place or person.

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[3] *Police Administration Act 1978* s 140b
[4] Police General Orders Q2 3.1.13
[5] *R v GP* (2015) 35 NTLR 117 at [30].

34. An assessment of the pre-caution does reveal that the questions were directed to the explanation of the police's attendance, her identification and explanation of the search warrant and drug searches to follow of the house at Lot 153, her person, and property in her possession. Her responses to the questions were either neutral, exculpatory or inculpatory:

> B: Any drugs or anything you want to tell me about?
>
> W: umm
>
> B: cause you'll get searched as well, so anything in your pockets…
>
> W: Bayungu, Bayungu, nothing in my pocket. All I got is gambling money in my speaker.
>
> I was going to card.
>
> B: Do you understand what is happening Jennifer?
>
> W: Yeah I know.
>
> B: Were searching your house for drugs.
>
> W: Yep (nods)

35. Constable Boiteau continues:

> B: Is there anything in the house, we are going to find?
>
> W: No. (shakes head).
>
> B: Nothing.
>
> B: Look nervous. I want to assure you…..... was based on what people told….
>
> I smell cannabis in here. [gestures to the bag]
>
> W: **'I was selling couple'. Here in the tank, water tank.**

36. The evidence reveals that Constable Boiteau had not turned his mind to whether the accused was a potential suspect until the above admission and only then does he administer the caution. Whether a person is a 'suspected person' to justify their arrest and ensuing caution is an objective test at the relevant time and 'brings an assessment of the circumstances in which the accused ought reasonably to have been seen as a suspect see, *The Queen v Layt* [2018] NTSC 36 at [28].

37. An objective assessment of the relevant period that police had intelligence and information of 'people' selling drugs that day from Lot 153. The time after returning after the walk through the accused had access to the locked rooms in providing police with keys. The officer was aware of the accused living at the household, her individual room, she had a quantity of cash 'won at cards' and that she was in possession of keys to the locked room.

38. The direct questions of whether there were drugs in the house, or on her person, and the expressions as to her body language of nervousness, and significantly that he had detected the smell of cannabis emanating from her tote bag. In my assessment and finding Constable Boiteau would objectively have considered the accused as a suspect and accordingly should have administered a caution in my view at the point in time of returning outside.

39. Section 139(1) provide that evidence of a statement made by a person during questioning is taken to have been obtained improperly for the purpose of s 138 if the person was under arrest

for an offence at the time and before starting the questioning the investigating official did not caution that person.

40. There is a further requirement in s 139(3) the caution must be given, or translated into, a language in which the person is able to communicate with 'reasonable fluency'.

41. It is my view on the recording the accused is bi-lingual woman and fluent in Yolngu-matha and that she had 'reasonable fluency' in English having regard to her responses pre caution and post caution. However, as Ipp AJA in *R v Deng* [2001] NSWCCA 153 at [34] the question of reasonable fluency extend to mean fluency sufficient to enable the person concerned to understand the caution.

42. As His Honour Reeves J in *The King v Woods* [2023] NTSC 21 stated that a caution is to inform a person of three broad things;

    i) The existence of their right to silence;

    ii) The basic content of that right;

    iii) The consequences of waiving that right.

43. The accused relies on the second police caution administered by First Class Constable Pearson as illustrative of her lack of understanding of the concept of her right to silence and the consequences of waiving that right. This demonstrated lack of understanding by the accused in the second caution by police that there should have been greater continuing time and efforts to ensure that she understood the caution as outlined in Police General Order Q2 and the Anunga Guidelines 3.1.3.

The second police caution

B: So I gotta caution you. All right, so you don't have to talk to me unless you want to. Alright?

W: Yep.

P: But anything you say will be recorded. Ive got cameras. Okay. Everything gets recorded and we can then use that in court as evidence, Do you understand that?

W: Yes.

P: So if I ask you a question, do you have to answer that question?

W: Ma. Yes.

P: No, no. Its your choice, right. Your choice. So if I ask you something and you don't want to tell me, then you don't have to tell me.

W: But I want to make it (Hand Gesture) you know.

W: Alright let me finish though. It is important that you understand that bit first – if you want to talk to me you can. If you don't want to talk to me you don't have to.

W: And if I don't wanna talk to you, what gonna happen?

P: I'm not sure about that, were still working through.

W: Alright.

44. I am satisfied that the accused had reasonable fluency in English to understand the second police caution and its concept as outlined in Wood, when she was cautioned by constable Boiteau and accordingly there was no requirement for that caution to be translated into her first language.

45. However I am satisfied that in respect of the first caution that the accused did not know her right to silence and also she did not possess reasonable fluency in English to understand the purposes of a caution as outlined in Wood, that arose due to the non compliance of Police General Order Q2 to repeat back the caution and to ensure understanding of her right to silence before proceeding any further. Therefore I fine that there was both a contravention of an Australian law under s 139(1) of ENULA and would arise to an impropriety Polie General Order Q2 3.1.3.

46. As stated previously in my view that the admission of "selling a couple, here in the tank" was improperly obtained by failing to administer the s 140(a) PAA caution earlier in time for the accused as a suspected person. I would consider the impropriety of the failure to ensure that the accused was not cautioned in the proper sense of the meaning and at an earlier stage is a non-conformity with Police General Order Rule 3.1.3 (albeit not a law) and each of these factors together would be more than an irregularity as held in *R v GP* (2015) 35 NTLR 117 at [34].

47. The onus now shifts for the prosecution to establish for the purposes of s 138 the desirability of admitting the evidence outweighs the undesirability of its admission. The prosecution indicates that the evidence has a high probative value given the evidence contains evidence of the possession and supply of the dangerous drug at the place of the 'tank' within an Indigenous community of Gapuwiyak. The offences alleged are serious given the supply and possession of a dangerous drug in an Indigenous community and vulnerable persons and social harm that may arise. The evidence is importance to the prosecution case given the absence of any other evidence and the prosecution case simply rises or falls on the evidence and admissions.

48. There was no suggestion that the three instances of improprieties were deliberate but were reckless perhaps attributed to the Constable Boiteau's responsibilities as the primary warrant holder on the first occasion. That there was no contention of any breach of the ICCPR for consideration. I have further considered that there was not any potential difficulty of requiring evidence that necessitated such improprieties given that there were other witnesses who resided at Lot 153 given police intelligence of 'people selling drugs' or other who may have observed transactions of supply within the community of Gapuwiyak.

49. The gravity of each impropriety is to be assessed by the seriousness of the departure of fundamental rights, policing practices, codes of conduct, and obligations *R v EM* [2003] NSWCCA 374.

50. The decision of *Ridgway v The Queen* (1995) 184 CLR 19 that in cases to exclude evidence on public policy grounds it is because, in all the circumstances of the particular case, applicable considerations of 'high public policy' relating to the administration of criminal justice outweigh the legitimate public interest in the conviction of the guilty.

51. In *Gedeon v R* [2013] NSWCCA 257, the exercise of the discretion does not depend on the question of fairness for the accused, rather as was said in Ridgeway on considerations of high public policy relating to the question of whether the effect of the illegality or impropriety on the administration of justice outweighs the legitimate public interest.

52. In the balancing exercise of the desirability to admit the evidence of the accused's admission does not outweigh the undesirability of its admission given the importance of ensuring integrity of the justice system in not condoning of improper conduct of police, who are entrusted consider that the high public policy consideration in ensuring the integrity of policing of those entrusted with the powers of law enforcement in the administration of an appropriate caution to an Aboriginal suspect and the protection of the individual right to silence and the capacity to understand that right.

53. In those circumstances I rule that the evidence of exhibit P2 of the body worn recording of Constable Boiteau will not be admitted in respect of the future hearing.

54. In respect of this ruling I would similarly under s 143 find that the conduct of the first caution officer Constable Boiteau was reckless and not deliberate and given first occasion as the holder of the warrant and having regard to longstanding public policy considerations as with *Bunning v Cross*[6] it would not be in the interests of justice to admit the evidence under the discretion.

55. Further given this, it is not therefore necessary to consider the fairness discretion under s 90 of ENULA.

Ruling

1. The evidence of Constable Boiteau recording the admissions of Jennifer Wunungmurra are not admissible on the Hearing proper.

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[6] (1978) 141 CLR 54