CITATION:	*Police V Peter Lance FARRELL [*2025] NTLC 13
PARTIES:	*Police*
	V
	Peter Lance FARRELL
TITLE OF COURT:	LOCAL COURT
JURISDICTION:	CRIMINAL
FILE NO(s):	22423490
DELIVERED ON:	14 July 2025
DELIVERED AT:	Darwin
HEARING DATE(s):	11 March & 2 April 2025
DECISION OF:	Judge Macdonald

CATCHWORDS:

Police powers – Caution - Search and seizure – Dangerous drugs – *Police Administration Act 1978* (NT) - ss 120B, 120C, 140 & 143 – *Liquor Act 2019* (NT) – Parts 8 and 10 - General Orders Q1 & Q2 - Exclusion of evidence – *Evidence (National Uniform Legislation) Act 2011* (NT) – ss 90, 138 & 139

REPRESENTATION:

Counsel:

Prosecution:	Ms T. Callaghan
Defendant:	Ms. R. Parsons

Solicitors:

Police:	ODPP
Defendant:	NAAJA

Decision category classification:	B
Decision ID number:	[2025] NTLC 13
Number of paragraphs:	37

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

No. 22423490

BETWEEN:

Police

AND:

Peter Lance FARRELL

Defendant

REASONS FOR DECISION

(Delivered 14 July 2025)

JUDGE MACDONALD

1. On 14 July 2025 I gave ex tempore decision in proceeding 22423490, with written edited reasons to be published. The reasons follow.

2. A *voir dire* hearing was conducted over 8 January, 11 March, and 2 April 2025 in relation to two charges brought against Peter Lawrence Farrell (Defendant) from 3 July 2024. The issues in dispute arose following a search of Lot 312 Gapuwiyak. The hearing entailed oral evidence from members of NT Police who attended Lot 312 for the purpose of search and seizure, together with the Body Worn Footage (BWF) of those members.

3. The issues in dispute for resolution are, firstly, the admissibility of evidence obtained by field interview and, second, the admissibility of evidence obtained in searching Lot 312 and Mr Farrell.

4. I note at the outset that the defendant clearly has a grasp of English, but very much as a second language. The attending members on 3 July 2024 had some intelligence that Peter Farrell may be selling alcohol and/or kava from Lot 312. The members' stated attendance was for an "APA search", which was understood to be an alcohol protected area (APA) search under the *Liquor Act 2019*.[1]

5. Whether they suspected Mr Farrell was also involved in cannabis at Lot 312 prior to their attendance, is not clear. However, the presence of cannabis was immediately apparent to at least OIC Muchow, as soon as the members entered the veranda attached to Lot 312. This was due to a strong odour of cannabis which could be smelt by Senior Sergeant Muchow.

6. It was Constable Kakies who first engaged with Mr Farrell on the veranda of Lot 312, by asking him to take a seat. Constable Kakies then directed Mr Farrell to empty his pockets, which produced a large amount of cash. The member then said, "*Okay. I'll tell you now, you don't have*

[1] Part 8 of the *Liquor Act 2019* provides for "*controlled areas*", which may include an "*alcohol protected area*", "*general restricted area*" and "*special restricted area*". Part 10 of that Act then provides a range of 'search and seizure' powers dependant upon the status of the area of operation and nature of the person or property to be searched. The scheme is complex, including due to the interaction or relationship of s 241 to s 238, and the principle of legality.

to say anything. Okay. Anything you do say will be recorded in this" - referring to his body-worn camera - "*and may be given in evidence*".

7. Without further ado, Constable Kakies then resumed the search by saying; "*You want to empty that pocket for me*." I note that turning pockets out on request is, effectively, a search. It is not analogous to a person being asked to advise their name and address or to produce their driver's licence with legislated authorisation to compel. Such a request forms part of a search and interrogation. Section 120C of the *Police Administration Act 1978* (PAA) did not authorise that aspect of the search.

8. It is also relevant that members of police are authority figures with the hallmarks of uniform, weapons and restraints. Citizens, including indigenous Territorians, who speak English as a second language, are inclined to be compliant and cooperative in requests made by members of police and in answering questions.

9. Members of NT Police operate under a wide range of legislation and statutory instruments, which is no easy task. However, in administering a caution to a suspect, it is essential that they be aware of s 140 of the PAA and s 139 of the *Evidence (National Uniform Legislation) Act 2011* (ENULA).

10. Although simply guidelines rather than law, members must also keep General Orders, and in this case, General Orders Q1 and Q2, in mind. General Orders are not law. For that proposition I would rely on the Court of Criminal Appeal's decision in *Heiss v The Queen* [1992] 2 NTLR 150 at 160. I also note his Honour Hiley J's decision in *R v Bonson* [2019] NTSC 22 and the authorities applied therein. The General Orders are guidelines only.

11. Despite that Constable Kakies appeared to comply with s 140(a) of the PAA, in my view the attempt was ineffective. There was no effort to have Mr Farrell state what he understood the caution to mean by paraphrased response or repeating it back. No interpreter was used and nor was the possibility of the caution being conveyed by telephone or ALO considered. An ALO was present at the scene.

12. No prisoner's friend was offered or sought. General Orders Q1 and Q2 were generally ignored in the administration of the caution in the subsequent field interview which ensued.

13. Section 140 of the PAA provides;

> ***140 Person to be warned and given opportunity to inform friend or relative of person's whereabouts***
>
> *Before any questioning or investigation under section 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,*
>
> *and, unless the investigating member believes on reasonable grounds that:*
>
> *(c) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or*
>
> *(d) the questioning or investigation is so urgent, having regard to the safety of other*

people, that it should not be delayed,

the investigating member must defer any questioning or investigation that involves the direct participation of the person for a time that is reasonable in the circumstances and afford the person reasonable facilities to enable the person to make or attempt to make the communication.

14. In applying and complying with s 140(a), I consider it is necessary for the suspect to actually understand the words prescribed by Parliament (and their import) in recognition of the common law right. I am satisfied on the balance that Mr Farrell did not properly understand his right to silence, so did not freely or voluntarily participate in the field interview which followed.

15. Paragraph (b) of s 140 of the PAA was not complied with at all. It is accepted that compliance with that limb of s 140 of the PAA is operationally inconvenient. Also, that compliance would not generally result in a suspect having an interpreter or secure a prisoner's friend, so in practice the requirement may also not be urgent. However, the requirement is prescribed by the PAA and the exceptions provided by paragraphs (c) and (d) of s 140 did not apply in this case, so failure to comply with paragraph (b) was unlawful.

16. In summary, compliance with s 140 of the PAA was ineffective and inadequate. The same may be said concerning compliance with s 139 of the ENULA.[2] General Order Q2, based on the Anunga Guidelines, was totally ignored. I am satisfied to the standards required by *Robinson v Woolworths* and *Parker v Comptroller-General of Customs*.[3] The admissions made by Mr Farrell during the field interview were obtained in circumstances where NT Polices' conduct leading to the admissions was both improper and unlawful in different respects.

17. The defence contends that the evidence should therefore be excluded by exercise of the discretion under s 138 of ENULA, or alternatively, s 90 on the basis of unfairness. The first contention requires consideration of the criteria prescribed by s 138(3). The nature and content of the evidence and the offence require that paragraphs (a), (b) and (c) of s 138(3) are given significant weight.

18. It is not accepted that the amount of cannabis and culpability involved are at the low end of this type of offending. There is a strong public interest in detection, prosecution and deterrence of commercial trafficking to and sale of cannabis in remote indigenous communities. That is due to the deleterious effect which the drug has on community fabric. It is also relevant that count one carries a maximum sentence of imprisonment of nine years. The evidence obtained is also particularly probative and important in the proceeding, albeit that evidence does not include the cannabis seized, which was less than 10 grams. Paragraphs (a), (b) and (c) support a refusal of the discretion to exclude.

19. The criteria prescribed by paragraphs (d) through to (h) inclusive point the other way.

20. It should be noted that determining whether evidence should be excluded is not a mathematical exercise and the necessary balance must be reached judicially with a variety of weight attaching to different factors depending upon the circumstances.

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[2] The Defendant may not have been "*under arrest*" until the end of the process, however was detained and not 'free to go'.

[3] *Robinson v Woolworths Ltd* (2005) 158 ACrimR 546 at [23] and *Parker v Comptroller-General of Customs* (2009) 83 ALJR 494 at [28] to [29].

21. Constable Kakies' communication style was laconic, casual and respectful. He sought to put the suspect at some ease and was not authoritarian or officious. However, his administration of the caution was perfunctory and reckless. That approach ensured the defects referred to.

22. A strong public interest also attends the importance of law enforcement officers having appropriate regard to the obligations and responsibilities conferred on their office by legislation and operational procedures.[4] I note the various statements of the Supreme Court concerning the circumstances in which evidence should and should not be excluded under s 138, noting that such an exclusion or refusal is an exercise of discretion.[5] There are a number of decisions in addition to the 2019 decisions in *Bonson* and *Gehan* which are relevant.[6] However, I consider the evidence of the field interview must be excluded.

23. If I am wrong in that, I would have exercised discretion under s 90 of the ENULA on the basis of my reasons and the rulings referred to. It is also my conclusion that it would not be appropriate to exercise discretion under s 143 of the PAA to alleviate the failures under s 140 and General Orders Q2.

24. The second issue for determination concerns the search of Lot 312, which premises Mr Farrell was staying in while visiting the community.

25. Members stated upon attending Lot 312 that they were conducting an APA search under the *Liquor Act*.[7] It was also suggested in evidence that kava was also suspected of being brought into the community by Mr Farrell. The relevant legislation in both cases empowers members of police to search premises without warrant, albeit different conditions apply.[8]

26. The PAA also provides through ss 120B and 120C for searches for dangerous drugs. However, any search of residential premises requires a warrant to have been issued. It is noted that the scheme of the amendments which introduced Division 2A of Part VII to the PAA is clear. The difference between s 120B and 120C in terms of reasonable grounds to believe, as compared with suspect, is also noteworthy.[9]

27. The attending members' knowledge and awareness of the dictates of s 120B, at least at the OIC level, was clearly apparent on the evidence. I also reiterate my finding concerning the members' being aware of the presence of cannabis at Lot 312 very shortly following their arrival and prior to entering the residential portion of the premises. The overwhelming tenor of the search of the

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[4] *The Queen v Gehan* [2019] NTSC 91 at [67].

[5] *The Queen v Bonson* [2019] NTSC 22 at [42] to [49] and [60] to [65], and *The Queen v Gehan* [2019] NTSC 22 at [8] and [9].

[6] Particularly *The Queen v Layt* [2018] NTSC 36 at [22] to [34] and [41] to [50] and [56] to [79] and authorities applied therein.

[7] The search may have more relevantly been a 'general restricted area' search, given the provisions of Parts 8 and 10 of the *Liquor Act*, and the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012 (Cth).*

[8] In certain circumstances a search under s 238 of the *Liquor Act* may be "*random*", such that neither reasonable grounds to suspect nor believe in order to validly found the search are required. Section 32 of the *Kava Management Act 1998* empowers a search without warrant where "*reasonable grounds to suspect*" an offence against that Act has been or will be likely to be committed. It is also noted that any member of NT Police exercising power under that Act is not required to hold any Identity Card issued under s 30.

[9] See *Queensland Bacon v Rees* (1966) 115 CLR 266 at 303 and *George v Rockett* (1990) 170 CLR 104 at 115.

interior of the premises was for cannabis. This is borne out by the frequent reference in the BWF to "*It*", that term being reference to a cache of cannabis.

28. Cannabis was ultimately found in a container behind where the Defendant was sitting on the veranda, but there is no doubt that the manner of searching (which included winnowing of clothes and bedding, and checking under flat items, and inside plastic bags) and also various dialogue between the members, lead to an inevitable conclusion that the search of the premises morphed into one for cannabis, rather than alcohol or Kava, almost immediately following the first interaction with Mr Farrell on the veranda.

29. That included, because one of the occupants was seen to secrete a bong upon the members' arrival. The principle referred to in the 2009 decision of *Jesson*, derived from *Hart v Commissioner of AFP* and *Johns v Australian Securities Commission* is, in my view, unavailable to rescue the search of the premises from a characterisation of "unlawful".[10]

30. A substantive and material difference exists between chance finder during a lawful search, as compared with conduct of a search specifically in circumstances where a warrant is required, and members know that reality, and no warrant exists. The members were aware that a warrant was required to search premises for a dangerous drug, however that imperative was ignored until the search had concluded.

31. The characterisation placed in evidence on the point in time at which a warrant was sought is not accepted. It is not my finding that the initial reliance on an APA search, or for kava, was a ruse with an ulterior motive to search for cannabis.[11] However, the members had more than reasonable grounds to believe cannabis was present at the premises as soon as they arrived, and cannabis was the primary (if not sole) target or object of the search of the premises thereafter, so a warrant was required for that purpose.

32. A material difference exists between some absence of authority, on the one hand, and a positive obligation to hold authority, on the other. It is accepted that having to delay the search which was then required and prolong the apprehension of all of the persons present at the premises, would have been operationally inconvenient.

33. The attraction of continuing to rely upon the *Liquor Act* search power (and perhaps the *Kava Management Act* provisions) is obvious. However, that would be at the expense of ignoring the clear intent of s 120B of the PAA. The evidence does support the proposition that a warrant could have readily and rapidly been sought and obtained, as the OIC's actions following discovery and seizure of the cannabis cache demonstrated.

34. The seeking of a s 120B warrant under the PAA was relegated to the status of simple formality or an administrative task in circumstances where Parliament has made clear that a warrant is first required. Given my findings concerning the nature and object of the search conducted inside the premises, it is not accepted that members only concluded that a s 120B warrant was required following discovery of the three bags of cannabis on the veranda of Lot 312. They ignored the need for a warrant until the evidence they were seeking had been obtained. It is also the case that to simply permit the *Liquor Act* to provide sufficient authority in the circumstances would render the condition imposed by s 120B of the PAA to nought in all alcohol restricted areas, which most remote Aboriginal communities are.

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[10] *Johns v Australian Securities Commission & Ors* (1993) 178 CLR 408 at 426 and *Hart v Commissioner of Australian Federal Police & Ors* (2002) 124 FCR 384 at 399-401, cited in *R v Jesson* [2009] NTSC 13.

[11] If that were the case, the obiter of paragraph [11] of *R v Gehan* (supra) would inevitably apply.

35. The proposition at [67] of *R v Gehan* (supra) concerning the importance which must be attached to ensuring that law enforcement officers entrusted with powers which abrogate fundamental liberties pay close attention to the conditions and limitations on the exercise of those powers, is apposite. I also note the High Court's observation at page 111 of *George v Rockett* (supra) namely, to insist on strict compliance with the statutory conditions governing the issue of search warrants is simply to give effect to the purpose of the legislation.

36. In the circumstances and notwithstanding the collateral authority provided by Part 10 of the *Liquor Act* for searches of premises without warrant, it is my conclusion that the evidence seized by the search should be excluded. This is despite the crucial probative value that evidence has to the conduct of the prosecution and the very significant public interest in prosecuting offences of the ilk with which Mr Peter Farrell is charged.

37. Again, I also consider that s 143 of the PAA is not enlivened in the circumstances and that s 90 of the ENULA would be properly applied in the event that the discretion under s 138 were not exercised.
