

PARTIES: THE QUEEN
v
BRONWYN RANKIN

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN
TERRITORY exercising TERRITORY
JURISIDICITION

FILE NO: 9803744

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JUDGMENT OF: THOMAS J

CATCHWORDS:

Criminal Law – evidence – voir dire – confessions and admissions – admissibility of record of interview – Anunga Rules – whether admissions made voluntarily.

Criminal law – evidence – voir dire – judicial discretion to admit or exclude evidence – record of interview admissible.

Evidence Act 1939 (NT), s 26L, Police Administration Act 1978 (NT), s 140

R v Anunga (1976) 11 ALR 412; R v McDermott (1948) 76 CLR 501; R v Swaffield (1998) 151 ALR 98, considered.

Gudabi v The Queen (1984) 52 ALR 133; R v Charlie Bara (NTSC unreported decision, 5 October 1998, Kearney J), referred to.

REPRESENTATION:

Counsel:

Crown: M. Carey
Defendant: J. Lawrence

Solicitors:

Crown: Director of Public Prosecutions
Defendant: Katherine Regional Aboriginal Legal Aid
Service

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

No. 9803744

BETWEEN:

THE QUEEN

AND:

BRONWYN RANKIN

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 4 December 1998)

THOMAS J:

- [1] The accused, Bronwyn Rankin, has entered a plea of not guilty to a charge that:
- [2] On 21 February 1998 at Katherine in the Northern Territory of Australia, unlawfully killed Bella O'Connor in such circumstances as to constitute manslaughter.
Contrary to s163 of the *Criminal Code*.
- [3] This ruling deals with an application on behalf of the accused pursuant to s26L of the *Evidence Act* challenging the admissibility of a record of interview, conducted between the accused and police officers at the Katherine Police Station on 22 February 1998, on the trial of the accused.

- [4] The brief background to this matter is as follows:
- [5] The body of the victim in this matter was found by Mr Roy Anderson, husband of the accused, in house No. 3 at Gorge Camp. Mr Anderson and his wife, Bronwyn Rankin, share this house with another couple who were not at the camp that weekend.
- [6] The victim was lying on her back on a mattress in house No. 3. There was a lot of blood on her thigh area and further down her leg. However, the injury that was the cause of her death was not immediately apparent to Mr Anderson. The police and an ambulance were called. The forensic pathologist, Dr Kevin Lee, also attended and found the cause of death to be bleeding from a stab wound to the femoral artery in the thigh. The stab wound was inflicted with moderate force to a depth of 3.3 centimetres.
- [7] The accused and her husband were both spoken to by police. They were both intoxicated. Bronwyn Rankin was arrested. Police had a conversation with her pursuant to the provisions of s140 of the *Police Administration Act*. Bronwyn Rankin was held in police custody at Katherine Police Station. At 3.33pm on 22 February 1998, Constable Stephen John Stanley Pfitzner commenced a record of interview with Bronwyn Rankin in the presence of Detective Sergeant Kristopher John Evans and the prisoner's friend, Gloria Rankin.
- [8] The defence challenge to the admissibility of the record of interview is that it was not made in the exercise of Bronwyn's free choice to speak or to

remain silent. This was, on the defence submission, because of the combination of Bronwyn Rankin's subjective features and the process of questioning her and of interpreting and re-explaining the caution and the questions to her. These aspects of the interview, when combined, led to a confusion such that the Crown would not be able to discharge the burden of proof upon them, that when Bronwyn ultimately did answer the questions she did so voluntarily and with the understanding that she had a choice.

[9] Mr Lawrence, on behalf of the accused, submitted that if I were to find the record of interview had been made voluntarily then in the exercise of my discretion I would still exclude the record of interview. The argument in favour of the exclusion of the record of interview on the trial of the accused was based on the general background of uncertainty and confusion about this case, including what had occurred to the victim and who had allegedly inflicted the wound. Counsel for the accused submits that what Bronwyn said in the interview and the circumstances in which she said it, are afflicted with a distinct lack of certainty and consequently the admission of that evidence would be unfair and unreliable. This, combined with features of the interrogation, including breaches of the Anunga Rules (*R v Anunga* (1976) 11 ALR 412) and the Police Standing Orders, would be sufficient to persuade the Court that in the exercise of discretion the record of interview should not be admitted.

[10] Two audio tapes of the conversations with Bronwyn Rankin pursuant to s140 of the *Police Administration Act* were played and tendered as Exhibit P1 on

the application. Video and audio tapes of the record of interview, commencing at 3.33pm and concluding at 5.50pm on 22 February 1998, were played and tendered as Exhibit P2. The audio tape of the conversation with the prisoner's friend was tendered as Exhibit P3. Transcript of the video and audio tapes of the record of interview commencing at 3.33pm on 22 September 1998 and concluding at 5.50pm on 22 February 1998, was tendered and marked Exhibit P4.

[11] There is a complaint that the police officers did not advise Bronwyn Rankin at any time during the record of interview of what it was they wanted to talk about with her. However, I am satisfied Bronwyn Rankin was fully aware police wanted to interview her about the death of Bella O'Connor. She had been arrested by police and was in both conversations pursuant to s140 of the *Police Administration Act* advised by police that they were making inquiries about the death of Bella O'Connor. During the course of the record of interview, police had to stop Bronwyn Rankin from telling her story and making admissions about the incident because they were not satisfied that she had understood the caution. Bronwyn's apparent eagerness to tell her story, which was about the death of Bella O'Connor, reinforces my assessment that she understood exactly what it was police were interviewing her about.

[12] Mr Lawrence refers to the transcript of the video taped record of interview and submits essentially that the caution was never properly understood by

his client in the sense that she understood she had a right to speak or remain silent and in fact thought she had to answer the police questions.

[13] As an alternative argument, Mr Lawrence refers to p3 of tape 2 of the record of interview. Bronwyn Rankin was asked:

“PFITZNER: Okay. So can you ask her does she have - does she – does she have to speak to police or can she be quiet if she wants – wants to be quiet?

LANGUAGE SPOKEN.

RAYMOND: She might stay quiet.”

[14] It is Mr Lawrence’s submission that in breach of Police Standing Orders and the Anunga Rules (*R v Anunga* (supra)), police continued to question Bronwyn. Mr Lawrence cites this as another example of Bronwyn Rankin’s will being overborne, not deliberately or consciously by police, but because of her subjective features.

[15] Mr Lawrence further submits that again in breach of the decision in *R v Anunga* (supra) and Police Standing Orders, police continually asked Bronwyn a question and then said “Do you understand?”. At no time did police ask Bronwyn to explain in her own words her understanding of the caution.

[16] Mr Lawrence refers to leading questions being asked in the latter part of the record of interview and submits that all of these are matters which would support the exercise of a discretion to exclude the admissibility of the record of interview on the trial of Bronwyn Rankin.

[17] The record of interview commenced at 3.33pm on Sunday 22 February 1998. The record of interview was conducted by Constable Pfitzner in the presence of Detective Sergeant Evans. Constable Pfitzner had gone to Gorge Camp and carried out inquiries in respect of the death of Bella O'Connor. Constable Pfitzner arrested the accused and was present at the time of both conversations with Bronwyn Rankin pursuant to s140 of the *Police Administration Act* (audio tape 1 and 2, Exhibit P1). Bronwyn Rankin's husband Roy Anderson, was also arrested and spoken to by police. Both Bronwyn Rankin and Roy Anderson were drunk at the time. Most of the people present at Gorge Camp when the police arrived, appeared to be intoxicated. Prior to commencing the record of interview, Constable Pfitzner at the request of the accused, made arrangements for the attendance of a prisoner's friend. This person was the accused's sister, Gloria Rankin. Constable Pfitzner had a conversation with Gloria Rankin prior to the commencement of the record of interview. He explained to Gloria the role and purpose of having a prisoner's friend in attendance at the record of interview. This conversation is on tape and the audio tape was tendered and marked Exhibit P3.

[18] Constable Pfitzner gave evidence he did not, during tape 1 of the record of interview, come to the conclusion that Bronwyn Rankin understood the caution. At the time the record of interview commenced, Constable Pfitzner stated he believed both Bronwyn Rankin and Gloria Rankin were sober. He had explained to Gloria Rankin her role as a prisoner's friend for Bronwyn

Rankin and was satisfied Gloria understood the requirements as explained to her. The transcript of the first tape of the record of interview, shows no evidence that Bronwyn Rankin had understood the caution. On two occasions (t/p 5 and t/p 6 of the first tape), when asked “Do you have to talk to us?” Bronwyn replied “Yes.” An example of the questions and answers are (t/p 4-5):

PFITZNER: No, I’m just – I’m just explaining to you - - -
RANKIN: Mm.

PFITZNER: - - - your right to silence, okay? Okay, so do you understand that you don’t have to talk to us? Do you understand that?
RANKIN: Yes.

PFITZNER: And do you understand that if you do say something it’s gonna go on the tapes and the tapes might end up in court. Do you understand that?
RANKIN: Yeah.

PFITZNER: And they could be used against you in court. Do you know what a court is? Do you know what a court does?
RANKIN: (NO AUDIBLE REPLY)

PFITZNER: What does a court do?
RANKIN: Um - - -

PFITZNER: Sorry? Have you been – you understand what the job of the court is?
RANKIN: No.

PFITZNER: Do you understand that if a person – they might get in trouble with the law, with the police and then that person might end up in court and that’s that place where they go - - -
RANKIN: Yeah.

PFITZNER: - - - and then the magistrate or the judge might hear what the police have to say and they might hear what the defence has to say, or the person, and then that magistrate or judge can make up his mind as to whether that person is guilty or innocent. Do you

understand that?

RANKIN: Yes.

PFITZNER: And then after that, then that magistrate or judge might, you know, sentence that person or let them go free or – depending on what’s been put before the court. Do you understand that?

RANKIN: Yes.

PFITZNER: Do you have to talk to us?

RANKIN: What I done last night?”

[19] and (t/p 5-6):

“PFITZNER: Now, if you don’t wanna say anything to us, that’s perfectly all right, okay? You don’t have to say anything. If you want to say your story, you can say your story too. That’s okay as well. Do you understand that?

RANKIN: (NO AUDIBLE REPLY)

PFITZNER: So do you have to talk to us?

RANKIN: Yeah.

PFITZNER: But do you have to?

RANKIN: Last night?”

[20] After a period of time Constable Pfitzner abandoned the interview in order to obtain an interpreter as he was not satisfied Bronwyn Rankin did understand the caution.

[21] In cross-examination Constable Pfitzner agreed that at the time of the record of interview he did not understand the exchanges between Gloria Rankin and Bronwyn Rankin who were speaking to each other in Kriol. Having read the translation of that conversation prepared by Ms Raymond (Exhibit D4), Constable Pfitzner agreed that it was possible Gloria Rankin was only confusing the situation in her explanation to Bronwyn. One example is a

statement by Gloria Rankin to Bronwyn Rankin in which Gloria says (t/p 3): “If you don’t want to talk to them you don’t have to talk to them if you don’t want to.” Gloria then says “What you have to do now. You gotta talk to them. They are asking you if you gonna talk to them.” Bronwyn’s response is noted as inaudible. Constable Pfitzner agreed that at this stage Gloria Rankin appeared to be getting impatient and she said (t/p 3): “We gotta sleep here all day.” Constable Pfitzner agreed that although he did not understand the Kriol language spoken by Gloria Rankin and Bronwyn Rankin, it became apparent that Gloria was not helping and that by becoming impatient she could be urging Bronwyn Rankin to speak. After some further attempts by Constable Pfitzner to have Gloria Rankin explain the caution, Gloria Rankin said to Bronwyn Rankin (Exhibit D4 t/p 4-5):

“GLORIA: You have to talk, you have to say yes or no to tell them the true story from what you done last night. You gotta talk to these two. You can say yes or no.

BRONWYN: Yes.

GLORIA: You gotta talk to them about that last night one.

BRONWYN: I stabbed Bella last night. With a knife.”

[22] Shortly afterwards Sergeant Evans interceded because Bronwyn Rankin clearly had not understood the caution or her right to either speak or remain silent. The record of interview was suspended and arrangements were made for an interpreter to attend. Ms Raymond, an interpreter in the Kriol language, attended the police station. Ms Raymond had approximately 10 minutes alone with Bronwyn Rankin in the interview room before the interview resumed.

[23] The interview resumed at 4.53pm. Present at the interview were Bronwyn Rankin, Constable Pfitzner, Sergeant Evans, Gloria Rankin, who remained as the prisoner's friend and an interpreter, Ms Raymond. Constable Pfitzner noted the persons present at the video record of interview and explained the role of Gloria Rankin and Ms Raymond. Ms Raymond's translation of these conversations in tape 2 is Exhibit D2 and read with the Crown transcript of tape 2 of the record of interview reads as follows (the italics indicate where Kriol is spoken) (t/p 2):

“PFITZNER: Okay? Do you understand that's what's happening here, Bronwyn? Because you're having a bit of trouble understanding us, we're gonna use Barbara here to – to make you understand better?

RANKIN: Yeah.

PFITZNER: Are you happy - - -

RANKIN: Yep.

PFITZNER: - - - with that? Okay. Right. Now, okay Barbara, I just wanna start by saying to Bronwyn, okay, that she doesn't have to say anything to us, okay? Can you just tell us that?

RAYMOND:: *You don't have to talk anything to them you know that (language).*

RANKIN: *Yeah.*

RAYMOND: *Yeah.*

PFITZNER: Okay. If she says anything, it'll be recorded on these tapes.

RAYMOND: *If you are going to talk something it's going to be recorded on this tape recorder here (language).*

PFITZNER: Does she understand that?

RAYMOND: *Yes do you understand that (language)?*

RANKIN: *Yeah.*

PFITZNER: And anything she says can be recorded on the tape and that may be used in court against her.

RAYMOND: *Might be something you are saying here now today*

they gotta record on this tape and use it at the courthouse against you (language).

RANKIN: *Yeah.*

PFITZNER: Okay. So can you ask her does she have – does she – does she have to speak to police or can she be quiet if she wants – wants to be quiet?

RAYMOND: *You gotta talk to these police or stay quiet.*

RANKIN: *Stay quiet (language).*

RAYMOND: She might stay quiet.

PFITZNER: Okay, she understands she can – she can tell her story or she can be quiet if she wants to?

RAYMOND: *Do you understand that you don't have to tell a story you can stay quiet (language).*

PFITZNER: Does she understand that?

RANKIN: (Inaudible)

RANKIN: *I don't understand anything.*

RAYMOND: She don't know anything that you saying.

PFITZNER: What we're trying to get across to her is that – ah – we're gonna ask her some questions and that she doesn't have to answer them.

RAYMOND: *They just want to talk to you and ask you some question. If you don't want to answer the question you can sit down quiet.*

RANKIN: *Yeah.*

PFITZNER: Okay, does she understand that she doesn't have to answer unless she wants to?

RAYMOND: *You know that you don't have to answer that you can stay quiet. You know that? (language).*

RANKIN: *Umm.*

RAYMOND: Yes.

PFITZNER: Right. Okay. Does she want to tell us about what happened yesterday?

RAYMOND: *You gotta tell them what happened yesterday? (language)*

RANKIN: Um – just - - -

RAYMOND: Uh?

RANKIN: I been drunk, get mad and stab that (inaudible).

RAYMOND: *Now do you want to tell them about it? (language)*
Yeah she wants to tell the story.

PFITZNER: Okay. Can you – can you ask her what happened yesterday?

RAYMOND: *What happened yesterday? (language).*

RANKIN: *I was drinkin' – drinkin' and I was watching video – television and I seen (inaudible) and I just run and get that knife and stab him, that's all. I don't know anything. I was drunk.*

RAYMOND: Um – ‘Well I was watching video and that Bella and that man was sitting outside and I just got up and grab a knife and just ran and stabbed her. I don't know anything what happened ‘cause I was drunk.’”

[24] The evidence of Constable Pfitzner is that at the conclusion of this exchange he was satisfied that Bronwyn Rankin understood the caution and understood her right either to speak or refuse to talk. Constable Pfitzner gave evidence that he did not ask Ms Raymond to have Bronwyn explain the caution in the Kriol language because he thought it may only confuse the issue. Constable Pfitzner agreed that he had relied on the interpreter, Ms Raymond, to properly explain the caution. He agreed that Bronwyn's response (t/p 3 of tape 2): “I been drunk, get mad and stab that (inaudible)” was not responsive to his question immediately before, which was: “Right, okay. Does she want to tell us about what happened yesterday?”.

[25] Under cross-examination, Constable Pfitzner stated that although at the time he was satisfied Bronwyn Rankin understood the caution, on going back through it, as he had just done with Mr Lawrence, he believes he could have pursued the caution a bit further. However, he considered Ms Raymond was better qualified to assess Bronwyn's level of understanding. Constable Pfitzner said he was not aware Bronwyn Rankin suffered from partial deafness. In re-examination Constable Pfitzner was taken to the report

prepared by linguist, Denise Angelo (Exhibit D1). This report shows (t/p 18) that Ms Angelo had translated the last question and answer in respect of the caution as follows:

“RAYMOND: Do you want to tell them?

RANKIN: Yeah.

RAYMOND: Yeah she want to tell you something.”

[26] Constable Pfitzner said when he watched the reply on the video tape it was his belief Bronwyn Rankin had replied to the last question. He gave evidence that in light of that answer he believed at the time that the accused had made a choice in relation to answering the questions in regards to the matter. Her choice was to tell police her story.

[27] Sergeant Kristopher John Evans was present during the record of interview. His evidence is that he was not satisfied initially that Bronwyn Rankin understood the caution. For this reason the interview with Bronwyn Rankin in the presence of her prisoner’s friend, Gloria Rankin, was terminated. Arrangements were then made for an interpreter in the Kriol language, Ms Raymond, to attend to interpret for Bronwyn Rankin in the record of interview. Sergeant Evans formed the opinion that with the assistance of Ms Raymond, Bronwyn Rankin did understand the caution.

[28] Ms Raymond is an accredited interpreter for the language of Kriol translated into English and English back into Kriol. Ms Raymond works for an interpreter service and on 22 February 1998 she attended the Katherine Police Station to interpret for Bronwyn Rankin. At the Katherine Police

Station she interpreted the questions put by the police officers into Kriol for Bronwyn Rankin. Bronwyn Rankin answered some of the questions in Kriol and some in English. Whenever she answered in Kriol, Ms Raymond would translate the answer to the police officers in English. It is Ms Raymond's evidence that she has known Bronwyn Rankin a long time and talked to her a lot of times and in Ms Raymond's opinion, Bronwyn Rankin understood everything that she said to her. Ms Raymond stated in evidence that in her opinion Bronwyn Rankin understood that she could either tell the policeman her story or sit quietly and tell him nothing.

[29] Under cross-examination Ms Raymond stated that she knew Bronwyn Rankin to be a very heavy drinker and that her nickname was "Shaky" because she shakes as a result of her drinking. At the interview she thought Bronwyn Rankin was still affected by alcohol. Bronwyn was shaking and seemed scared and nervous. When Bronwyn had told her she would stay quiet Ms Raymond told the police "she might stay quiet". Ms Raymond was surprised that the police continued to ask questions. When they asked the next question Bronwyn said "I no more savvy anything". Ms Raymond gave evidence that this means that she didn't understand anything. Later on when she was asked "what happened yesterday" Bronwyn Rankin replied "I don't know anything", which means the same, that is, she didn't understand anything. Ms Raymond gave evidence that she has sat in on interviews and translated for police before.

[30] The defence called two witnesses to give evidence on the voir dire. Denise Nee Angelo is a senior linguist with the Katherine Regional Aboriginal Language Centre. Ms Angelo gave details of her qualifications and her employment as a linguist, which includes teaching linguistics at Sydney University and working as a linguist for a period of seven years with her present employer. The interpreting service covers two major Aboriginal languages, Kriol and Walpiri. There are three accredited interpreters: Ann Marie Huddleston, Ms Raymond and Georgina George. Ms Angelo trains interpreters and was the lecturer for the 1995 Diploma in Interpreting which was for translating Kriol into English and English into Kriol. Ms Angelo was requested by the Katherine Regional Aboriginal Legal Aid Service (KRALAS) to listen to and view the audio tapes and video tapes of the police record of interview with Bronwyn Rankin. Ms Angelo was asked to complete the Crown transcript of the record of interview with respect to the sections in Kriol because they had not been transcribed, and to make comments relevant to the Kriol language and Bronwyn Rankin's understanding of the caution.

[31] Ms Angelo prepared a report for KRALAS after listening to tape 1 and tape 2. Tape 2 involved listening to Ms Raymond and Bronwyn Rankin's responses. The report was tendered and marked Exhibit D1. Ms Angelo gave evidence that from a linguistic point of view, the caution is difficult to translate because there are numerous dependent concepts.

[32] With respect to tape 1, it is Ms Angelo's evidence that there is no indication from the responses made by Bronwyn Rankin that she understood the caution.

[33] The Crown do not seek to persuade the Court that by the conclusion of tape 1 of the record of interview, Bronwyn Rankin understood the caution. In fact, the very reason the interview was suspended to obtain the services of an interpreter was because police were not satisfied that Bronwyn Rankin understood the caution. A reading of the transcript of tape 1 together with a video viewing of tape 1, confirms that Bronwyn Rankin did not appear to have grasped the meaning of the caution that the police officers were using their best endeavours to explain. For this reason I have not gone into the detail of Ms Angelo's evidence in respect of tape 1. There is not really any dispute that at the conclusion of tape 1 Bronwyn Rankin had not understood the caution. In fact the prisoner's friend, Gloria Rankin, appears to have complicated the situation by becoming impatient and seemingly urging Bronwyn to get the interview over and done with and talk to police. On two occasions during tape 1, Bronwyn Rankin has answered affirmatively to the question "do you have to speak to us?".

[34] It is Ms Angelo's evidence that while Bronwyn Rankin answers "stay quiet" translated as "she might stay quiet" on p3 of the transcript of tape 2, there is a small possibility that this answer indicates Bronwyn Rankin understood she had a choice to speak or stay silent and that she chose the latter. Up to this point, Bronwyn Rankin has very little input to the conversation, most of

her answers being one or two words. Ms Angelo stated that where, on p3 of the transcript of tape, Ms Raymond translates the answer from Bronwyn Rankin as “she don’t know anything that you saying”, Bronwyn’s answer was “I don’t know/understand anything”. In Ms Angelo’s opinion, at this point in the record of interview, the evidence that Bronwyn Rankin understands the caution is minimal.

[35] It is the following questioning that the Crown rely upon as evidence that Bronwyn Rankin does understand the caution and, at p4 of the transcript of tape 2, starts to tell her story.

[36] Ms Angelo agrees that the only response from Bronwyn to these four questions is “yeah”. The questions and answers from transcript p3.5 – 4.1 are as follows:

PFITZNER: What we’re trying to get across to her is that – ah – we’re gonna ask her some questions and that she doesn’t have to answer them.

RAYMOND: *They just want to talk to you and ask you some question. If you don’t want to answer the question you can sit down quiet.*

RANKIN: *Yeah.*

PFITZNER: Okay, does she understand that she doesn’t have to answer unless she wants to?

RAYMOND: *You know that you don’t have to answer that you can stay quiet. You know that? (language).*

RANKIN: *Umm.*

RAYMOND: Yes.

PFITZNER: Right. Okay. Does she want to tell us about what happened yesterday?

RAYMOND: *You gotta tell them what happened yesterday? (language)*

RANKIN: *Um – just - - -*

RAYMOND: Uh?
RANKIN: I been drunk, get mad and stab that (inaudible).
RAYMOND: *Now do you want to tell them about it? (language)*
Yeah she wants to tell the story.

PFITZNER: Okay. Can you – can you ask her what happened yesterday?

RAYMOND: *What happened yesterday? (language)."*

[37] It is the evidence of Ms Angelo that there is nothing in those questions and answers which suggest to Ms Angelo that the caution was properly or effectively communicated to Bronwyn Rankin.

[38] In cross-examination, Ms Angelo agreed that Bronwyn Rankin appeared to be very shy on the video tape. Ms Angelo also gave evidence in the form of answers in cross-examination that the answers given by Bronwyn Rankin to questions, as appear on p3 and p4 of the transcript of tape 2, do not enable her to say either way as to whether or not Bronwyn Rankin understood the caution. It is Ms Angelo's evidence that there is a cognitive difficulty in linking the dependent concepts in the caution. Ms Angelo agreed that when Bronwyn Rankin replied "yeah" to the question "do you understand?", her answer "yeah" was responsive to the question as were her answers "yeah" on each occasion on p3 of the transcript of tape 2. Ms Angelo agreed Bronwyn Rankin is asked the question through the interpreter, Ms Raymond, in the Kriol language but stated that the response "yeah" could just be an acknowledgment of, and not a response to, the question.

[39] Ms Angelo agreed that when Ms Raymond uses the word "gotta" this is not necessarily implying compulsion. When Ms Raymond uses the word "gotta"

it could mean a compulsion or it could mean in the future. As a linguist, Ms Angelo stated that there is no evidence that when Bronwyn Rankin used the words “stay quiet” she was exercising a choice to stay quiet and not answer the questions. It could just mean that she was repeating the last two words of the question. It is Ms Angelo’s evidence that when Bronwyn Rankin answered “I don’t know/understand anything” (t/p 3 of tape 2), it is very difficult to know what it is she is talking about. It could refer to the caution or to the subject the police were investigating. It is Ms Angelo’s evidence that when Bronwyn Rankin does become more expansive in her answers and starts to tell police what happened this does not develop into a story. Ms Angelo agreed it was possible this could have been because Bronwyn’s memory was affected by the consumption of alcohol. Ms Angelo agreed that the answers given by Bronwyn Rankin were responsive to the questions. She gave further evidence that at the end of the narrative given by Bronwyn Rankin there were several pieces of information that did not go together, one example being the location of the knife. Ms Angelo further stated there were indications in the narrative that Bronwyn Rankin suffered cognitive difficulties from her lack of memory.

[40] The second witness to give evidence for the defence was Geoffrey Ivan Stewart who is a medical doctor employed by the Danila Dilba Medical Service. Bronwyn Rankin is a patient at this service. The vast bulk of entries relating to Bronwyn are since February 1998 when she took up residence at the FORWAARD Alcohol Rehabilitation Centre. Dr Stewart

refers to entries in the medical records commencing on the 25th February 1998, relating to poor balance and co-ordination. These are reflections of the central nervous system, i.e. brain function. There are only two entries prior to the 25th February and they do not indicate anything about this.

There is nothing to indicate a change or deterioration. Ms Rankin had a CT scan which was within normal limits. No neuro-psychological testing has been carried out and Dr Stewart is not able to say whether Bronwyn Rankin does have brain damage. A statutory declaration dated the 14th October 1998 from Sreedevi Aithal, an audiologist with Territory Health Services, was tendered and marked Exhibit D5. Paragraph 4 and 5 of this Statutory Declaration state as follows:

- “4. Bronwyn has moderately severe mixed hearing loss. She cannot comprehend soft speech spoken at a distance of 3ft. She can understand 65-85% of what is being said at a distance of 3 feet at normal conversational level and 93-97% of loud speech at the same distance.
5. Her history of hearing loss [since ? age of 14 years], history of chronic middle ear disease suggest that the hearing loss is most likely to be of a longer duration and it is unlikely to have had a recent onset.”

[41] On all of the evidence, the onus is upon the Crown to prove on the balance of probabilities that the record of interview was voluntary in the sense that the accused understood she had a choice to speak or be silent (*R v McDermott* (1948) 76 CLR 501).

[42] There is no dispute that at the conclusion of tape 1 of the record of interview, the caution had not been effectively communicated to or understood by Bronwyn Rankin.

[43] Mr Lawrence, counsel for Bronwyn Rankin, submitted that the police failed to inquire after the accused's health and whether she was hungry or thirsty. It is relevant to note however that during the video of tape 1 and the later tapes there is no sign that Bronwyn Rankin is in any state of distress or discomfort. During tape 1, Bronwyn had with her a prisoner's friend, being her sister, Gloria Rankin. Gloria Rankin remained with her as a prisoner's friend for the remainder of the record of interview. From the commencement of tape 2 there was also present an interpreter, Barbara Raymond. I find that Bronwyn Rankin understood the role and purpose of the prisoner's friend and the interpreter. Throughout the record of interview, there are instances where Bronwyn Rankin has herself answered in English, which indicates she had a basic understanding of English.

[44] At all times throughout the video of the record of interview, police officers treated Bronwyn Rankin in a patient, polite and considerate manner. There is no suggestion of any intimidation, inducement or duress. In fact, both Constable Pfitzner and Sergeant Evans made a considerable effort to explain the caution and to stop Bronwyn from giving her version of what had occurred the night before, until she had fully comprehended the caution and her choice to speak or remain silent. Both police officers proceeded with their efforts to explain the caution.

[45] Ms Raymond, the interpreter, has known Bronwyn Rankin for many years and has spoken to her on numerous occasions, both in Kriol and English. Ms Raymond concluded that Barbara Rankin did understand the caution after it had been explained to her again by Ms Raymond. A translation of the relevant questions and answers of the Kriol language was made by Ms Raymond (Exhibit D2); Annie Huddlestone's translation is Exhibit D3. Both of these women are accredited interpreters in the Kriol to English and English to Kriol languages. Their translations are substantially the same.

[46] I accept the evidence of Ms Raymond. Her translation of the relevant questions and answers is set out at p10-12 of this decision.

[47] I accept that Ms Raymond knew Bronwyn Rankin sufficiently well to know if the caution had been effectively communicated to her. I accept her evidence that when Bronwyn Rankin said "I don't understand anything", that Bronwyn was referring to the subject under investigation and not to her understanding of the caution. I note that in the record of interview (p4 tape 2) Bronwyn Rankin when telling her story of what had occurred the night before, said "I don't know anything what happened 'cause I was drunk". However, Bronwyn is able to recount in the record of interview her story of what occurred and the motive for her actions.

[48] The guidelines laid down in *R v Anunga* (supra) includes the following:

"(3) Great care should be taken in administering the caution when it is appropriate to do so. It is simply not adequate to administer it in the usual terms and say, "Do you understand that?" or "Do you

understand you do not have to answer questions?” Interrogating police officers, having explained the caution in simple terms, should ask the Aboriginal to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the Aboriginal has apparent understanding of his right to remain silent. Most experienced police officers in the Territory already do this. The problem of the caution is a difficult one but the presence of a “prisoner’s friend” or interpreter and adequate and simple questioning about the caution should go a long way towards solving it.”

[49] This guideline was not followed by police officers. Bronwyn Rankin was never asked to explain what was meant by the caution in her own words.

[50] Failure by the police to follow the guidelines does not automatically result in the exclusion of the evidence (*Gudabi v The Queen* (1984) 52 ALR 133).

[51] Having viewed the whole video tape of the record of interview and read through the transcript of the record of interview, it is apparent that Bronwyn Rankin’s answers are responsive to the questions put to her by police as she relates her story. This gives support to the view expressed by Ms Raymond that Bronwyn Rankin understood the caution as explained to her and elected to speak to the police officers. There are throughout the record of interview a number of occasions on which Bronwyn Rankin has replied to the question in English. This indicates a level of understanding and an ability to express herself in the English language. I accept that the caution contains some difficult concepts and it would have been prudent for the interviewing police officer to have followed the Anunga guideline by asking Bronwyn to explain the caution in her own words. However, Bronwyn Rankin did have the benefit of an interpreter to interpret the caution to her in her first language,

which is Kriol. Ms Raymond, who knows the accused and has spoken with her on other occasions both in English and in Kriol, was satisfied that Bronwyn understood the caution and had elected to speak with the police officers. Ms Angelo concluded there was no evidence which would satisfy her that Bronwyn Rankin had understood the caution; on the other hand she did concede that she could not say whether or not Bronwyn Rankin did understand the caution.

[52] I am satisfied on the balance of probabilities that the admissions made by Bronwyn Rankin were voluntarily made.

[53] I now consider the further submission made by counsel for the accused that in the exercise of my discretion I should exclude the record of interview.

[54] Mr Lawrence, counsel for the accused, submitted that the admission by Bronwyn Rankin in the record of interview and the subsequent story told by the accused is unreliable and should not be admitted as evidence on her trial. He submits that the story told is disjointed and more in the nature of speculation about what may have happened the night before, than a confession, due to the lack of detail in her account.

[55] I do not agree with this submission.

[56] The answers given by Bronwyn Rankin accord with forensic facts alleged by the Crown and in that sense her answers cannot be said to be unreliable. The forensic evidence is that the victim died from a stab wound to the leg.

Bronwyn told police without suggestion from them that she stabbed the victim in the leg and states a motive for her actions. There are some discrepancies between her answers and observations of other Crown witnesses, for example, the position where the knife was subsequently located. However, these are peripheral matters and cannot amount to a finding that Bronwyn Rankin's answers in the record of interview are potentially unreliable.

[57] The decision of the High Court in *R v Swaffield* (1998) 151 ALR 98 is relevant in respect of the breach by police of the Anunga Rules in failing to have the accused explain the caution in her own words. In *R v Swaffield* (supra) Toohey, Gaudron and Gummow JJ at p117-8 para 54 stated:

“Unfairness then relates to the right of an accused to a fair trial; in that situation the unfairness discretion overlaps with the power or discretion to reject evidence which is more prejudicial than probative, each looking to the risk that an accused may be improperly convicted. While unreliability may be a touchstone of unfairness, it has been said not to be the sole touchstone. It may be, for instance, that no confession might have been made at all, had the police investigation been properly conducted. And once considerations other than unreliability are introduced, the line between unfairness and policy may become blurred.”

[58] The failure by police to comply with the Anunga guideline and Police General Orders does not, in my opinion, render Bronwyn Rankin's voluntary admissions unreliable. The admission of the record of interview on her trial does not in my opinion involve a risk of Bronwyn Rankin being improperly convicted.

[59] Having heard the evidence of Dr Stewart, there is no evidence to support the submission made by counsel for the accused that the accused may be suffering from some impairment from brain damage.

[60] There is evidence in the form of the Statutory Declaration (Exhibit D5) from Sreedevi Aithal that Bronwyn Rankin does have a hearing impairment. However, the video tape of the record of interview shows Bronwyn to be in close proximity to those who were interviewing her. The interviewing police officer was not softly spoken and spoke at a reasonable volume. There is no suggestion in the demeanour of Bronwyn Rankin through the record of interview that she either failed to hear or was having difficulty in hearing the questions. That she did hear the questions is supported by the fact that each of her answers are responsive to the question that was asked.

[61] At the time of her arrest in the early hours of the morning of 22 February 1998, Bronwyn Rankin was affected by alcohol. She was not in fact interviewed until shortly after 3.30pm on 22 February 1998, some 12 hours after she had been taken into police custody. There is no evidence that she was, at the time of the commencement of the record of interview, still affected by alcohol. Ms Raymond referred to Bronwyn Rankin shaking. I did not see evidence of this on the video. If she was in fact shaking then this may be associated with a problem she had with alcohol at that time but does not indicate she was affected in such a way that she was not fit to be interviewed. Her nickname was "Shaky" by virtue of her chronic alcohol

addiction at that time, a problem which is now being addressed by her admission to the FORWAARD alcohol rehabilitation centre.

[62] It is a relevant fact that the accused is facing a serious charge (*R v Charlie Bara* (unreported decision, 5 October 1998) Kearney J at 18 and *R v Swaffield* (supra) Brennan J at 111).

[63] The failure to comply with the Anunga guidelines was not a reckless nor a deliberate disregard for the guidelines on the part of Constable Pfitzner. In fact, there is clear evidence that both Constable Pfitzner and Sergeant Evans made a concerted effort to comply with the guidelines in obtaining a prisoner's friend and when that did not appear to be satisfactory, they arranged for the presence of an interpreter. I have come to the conclusion that the admission into evidence of the record of interview would not be "obtained at a price which is unacceptable having regard to prevailing community standards" (*R v Swaffield* (supra) at 127).

[64] I am not persuaded by counsel for the defence that this is an appropriate matter in which to exercise discretion and exclude the record of interview from the trial of the accused.

[65] For these reasons I rule that the record of interview is admissible on the trial of Bronwyn Rankin.
