CITATION: *Police V Murrungun* [2003] NTMC 016

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| PARTIES: | PAUL TUDOR STACK<br>Informant<br>v<br>PATRICIA MURRUNGUN<br>Defendant |
| TITLE OF COURT: | Court of Summary Jurisdiction |
| JURISDICTION: | Committal Proceedings |
| FILE NO(s): | 20214475 |
| DELIVERED ON: | 28 March 2003 |
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| HEARING DATE(s): | 7, 11, 18, 28 March, 14 April 2003 |
| DECISION OF: | JENNY BLOKLAND SM |

**CATCHWORDS:** Committal Proceedings – Evidence – Confessions –Voluntariness Aboriginal suspect – Anunga Rules, Guidelines 3 and 8.

*R v Maratabanga (1993) 3 NTLR 77;*
*McDermott v The Queen* (1948) 76 CLR 501 at 511-12
*Collins v The Queen* (1980) 31 ALR 257 at 305 – 311
*R v Azar* (1991) 56 A Crim R 414
*Gudabi v The Queen* (1983) 52 ALR 133
*Roston v The Queen* (1991) 1 NTLR 191
*Coultard v The Queen (1981)* 12 NTLR 13

**REPRESENTATION:**

*Counsel:*

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| Informant: | Mr Mark Johnson |
| Defendant: | Mr Greg Smith |

*Solicitors:*

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| Informant : | Office of the Director of Public Prosecutions |
| Defendant: | North Australian Aboriginal Legal Aid Office |

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| Judgment category classification: | B |
| Judgment ID number: | [2003] NTMC 016 |
| Number of paragraphs: | 19 |

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20214475

*[2003] NTMC 016*

BETWEEN:

**PAUL TUDOR-STACK**
Informant

AND:

**PATRICIA MURRUNGUN**
Defendant

REASONS FOR DECISION ON VOIRE DIRE No. 1

(Delivered 28 March 2003)

Jenny Blokland SM:

1. These are committal proceedings examining whether the defendant, Patricia Murrungun should stand trial for the murder of Thomas Eurell, who died on the 15th June 2002.

2. Unusually, defence counsel has requested a voire dire on two records of conversation. At the time of writing these reasons the evidence was not yet complete on the second voire dire. I agreed the voire dire should proceed as the primary objection is formed on the basis of voluntariness. Although committals are administrative proceedings, the rules of admissibility apply, save for some doubts on whether the public interest discretion can be exercised to exclude evidence at this stage. In my view, the fairness discretion may in theory be exercised, but the alleged unfairness would need to run deep to demonstrate at a preliminary hearing that the admission of a confession impacts detrimentally on an accused's right to a fair trial.

3. Although I will make a ruling, I am under no illusions on the utility of this ruling. Aside from these proceedings, both parties and the eventual trial court can completely disregard this decision. As voluntariness is a fundamental rule of admissibility I make the ruling in the knowledge that it is confined to these proceedings.

**The Relevant Evidence in These Proceedings**

4. The body of the deceased person Mr Eurall was found in his unit on the 19th June 2002. The police investigation commenced at that time. The CIB officers in charge of the investigation were Detectives Lade and Gavin. A variety of formal steps in the investigation progressed that led investigating officers being informed on or about the 20th June 2002 of a relationship between the deceased and the defendant, Patricia Murrungun. Their initial inquiries were unsuccessful in locating Ms Murrungun, however on 26 June investigating officers located Ms Murrungun at John Stokes Square Nightcliff. Ms Murrungun was not arrested but after a short conversation with police, agreed to accompany police to the Peter McAuley Centre. Detective Lade, who was on leave during these proceedings and consequentially was not called to give evidence conducted the conversation and Detective Gavin was the corroborating officer.

5. Detective Gavin gave evidence that Ms Murrungun was asked if she wanted an interpreter or prisoner's friend to be with her. She told police she did not want anyone to sit with her. In Detective Gavin's view, Ms Murrungun had a good grasp of English, although Detective Gavin knew that Ms Murrungun's first language was not English. Detective Gavin felt satisfied that the defendant understood the role of the prisoner's friend and the role of an interpreter, however it appears Ms Murrungun did not want either of them. I accept Detective Gavin's evidence on those matters, however, given the challenge to the conversation, a record of these conversations would have shed further light on the situation. The record of conversation commenced at

10.53 am and finished at 11.23 am. It was recorded by video and audio tape. The video tape was played to the court in these proceedings.

6. The objection is grounded on voluntariness based on an indication by Ms Murrungun early in the conversation that she did not want to answer questions and that neither before nor after this indication was the caution administered in accordance with the *Anunga Rules.* The extent of compliance is a factor relevant to both voluntariness and the exercise of the discretion: *(R v Maratabanga (1993) 3 NTLR 77).*

7. Detective Gavin gave evidence that despite the indication by the defendant that she did not want to answer questions, in Detective Gavin's view, Ms Murrungun appeared to want to get on with the interview, fully understanding her rights.

8. In cross examination, there were a number of questions that Detective Gavin could not answer as they would be more appropriately directed to Detective Lade. She did concede that none of the conversations leading up to Ms Murrungun accompanying police to participate in the record of conversation had been recorded or noted. I note that as Ms Murrungun was not at that stage under arrest, and there was no *Police Administration Act* requirement to do so at that stage. She agreed that Ms Murrungun didn't speak English at the level of persons involved in these proceedings. There also appeared to be some agreement from Detective Gavin that although it was impressed on Ms Murrungun that she was participating in this process voluntarily, the status of her being at liberty may well have changed had she made certain admissions. It was suggested in these proceedings to Detective Gavin that the interview should have been terminated after the Ms Murrungun indicated she did not wish to answer questions. It was suggested that through further questioning, after her indication, Detective Lade was able to make direct suggestions to the defendant for her comment.

9. In my view the status of Ms Murrungun was unclear when she attended with police to make a statement. In my view she was understandably identified as a person of some interest to police in their investigation. It is not clear to me that she was a suspect as such at that stage. The processes undertaken by police were natural and legitimate tools of investigation but whether the product of this part of the investigation can properly be received into evidence is a separate question.

10. A breach or breaches of the *Anunga Rules* may lead to rejection of a statement if those breaches lead to the conclusion, on balance, that the confession was not "made in the exercise of [a person's] free choice", *McDermott v The Queen (1948) 76 CLR 501 at 511-12.* In assessing voluntariness, the court must focus not on the sources of duress, inducement and the like but on the *effect* of the conduct on a person's free choice. The *Anunga Rules* provide some guidance for this in the context of Aboriginal defendants. In *Collins v The Queen (1980) 31 ALR 257 at 305-311,* Brennan J discussed the necessity to focus on the will of the accused and to ask whether, in the specific circumstances of that particular accused, his or her will had been overborne. As part of this discussion, he said "[C]confessions made by those whose wills are more easily overborne – whether because of social condition, environment, natural timidity or subservience – will find reciprocally greater difficulty in being admitted into evidence" and further, "[I]f the confessionalist overbears his will , so that he speaks because the interrogation obliges him to do and not because he freely chooses, the confession is inadmissible." Since *R v Azar (1991) 56 A Crim R 414 @ 418* it is clear that the failure to caution cannot alone constitute an external overbearing of the will, however, voluntariness must be evaluated in this case in part by reference to the *Anunga Guidelines.* I bear in mind that not every breach of the *Anunga Rules* will indicate lack of voluntariness, nor does a breach of the rules mean that a court will reject the confession. In that regard I am well aware of *Gudabi v The Queen (1983) 52 ALR 133;*

*Rostron v The Queen (1991) 1 NTLR 191* and numerous trial judge rulings where after voir dire examination, a confession made in technical breach of the rules was still accepted into evidence. I am also aware of such cases as *Coultardt v Steer (1981) 12 NTR 13* where the Supreme Court reminded the lower courts of the need to comply with precedent, in that case, the emphasis being on *Anunga.*

11. I find that the defendant was a person to whom the *Anunga Rules* applied. Although in the record of interview she demonstrates better English skills than some people who have English as a second language, her English in not nearly on a par with a person whose first language is English. The test is not whether she possesses courtroom standard English that was referred to during these proceedings but whether she is an approximate equal with an English first language speaker. The evidence is that she is from Groote Eylandt and attained year 9 at school. Given the demonstration of her monosyllabic answers to investigating officers, the fact that she has attained that level of education should not militate against the application of *Anunga Rules*. In any event, police attempted to administer a caution in the *Anunga* style. In terms of guideline 3, she appears to be unable to explain what she understood by the caution. In fact, after the caution is given there is the following exchange:

> "Lade: Alright Can you tell me what I've just told you ? Your understanding of what I've told you ? What are your rights ? Do you know what your rights are ?
>
> Murrungun; No"

12. Further attempts are made to explain to the defendant that she has a "choice", however after explanation the following exchange takes place :

> "Lade: "Alright. So do you want to talk to a Police, me about that Tom Tom?"
>
> Murrungun "Nup"

13. Although Detective Lade tells her that its her choice, a lengthy silence follows – the longest silence in the recording, and the following occurs:

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| Murrungun | "Mm Mm Can I explain?" |
| Lade | "Yeah" |
| Murrungun | "Cos I never done nothing" |
| Lade | "Yeah, I know, I know you say that" |
| Murrungun | "Mm" |
| Lade | "But like people say that you pushed him and he fell backwards" |

14. From that point Ms Murrungun begins to answer questions without further caution. This culminates in direct questioning and putting propositions to her at the end of the conversation.

15. Relevant parts of the rationale of *Anunga* are as follows:

> "Some Aboriginal people find the standard cautioning quite bewildering, even if they understand that they do not have to answer questions, because, if they do not have to answer questions, then why are the questions being asked?"

There is then the further matter in guideline 8.

> "If an Aboriginal states he does not wish to answer further questions or any questions the interrogation should not continue."

16. It is evident Police made some attempts to comply with *Anunga*. It appears clear that police thought Ms Murrungun should have the benefit of the *Anunga Rules.*. Police did not however comply with the caution explanation requirements, nor the requirement to refrain from questioning when a suspect indicates she does not wish to answer questions, nor the requirement not to put propositions in a direct or leading way

17. The long silence after her indication that she did not want to answer questions conveys, I'm sure unintentionally, but nevertheless does convey a sign of displeasure at her indication not to answer further questions. That factor, coupled with her inability to explain the caution back to investigators at the outset lead me to the inevitable view that I cannot be satisfied on the balance of probabilities that her will was not overborne.

18. The record of conversation is therefore inadmissible in these proceedings.

19. I shall hear counsel on how they wish to proceed further.

Dated this 28 day of March 2003.

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JENNY BLOKLAND
**STIPENDIARY MAGISTRATE**

**ADDENDUM TO REASONS FOR DECISION IN**
**PAUL TUDORSTACK V PATRICIA MURRUNGUN.**

Following the delivery of the decision on the voir dire on 28 March 2003, the prosecution closed its case on the charge of murder. The court ruled there was not sufficient evidence to place the defendant on trial for murder. The defendant was discharged on that count.

There was sufficient evidence to place her on her trial for assault with circumstances of aggravation, namely, causing bodily harm and the use of an offensive weapon.

On 14 April 2003 the defendant pleaded guilty to the one count of aggravated assault. She was sentenced to eight months imprisonment commencing on 5 December 2003. Further, it was ordered that the balance of the sentence be suspended from 14 April 2003. A period of two years was set under s 40 (6) *Sentencing Act.*

The order was made subject to the following conditions: that she accept supervision from correctional services and obey all reasonable directions on reporting, residence, counselling and attendance at both residential and non-residential alcohol rehabilitation programs and attendance at any education and training programs.

Dated this 14th day of April 2003.

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JENNY BLOKLAND
**STIPENDIARY MAGISTRATE**