

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

MARTIN SOKAD

Criminal Case No. 326

Trial Division of the High Court

Palau District

November 7, 1969

Prosecution on a charge of assault with a dangerous weapon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that accused's confession after knowing and intelligent waiver of right to counsel is admissible, however, any statement made after an accused changes his mind or requests counsel, is not admissible unless made after consultation with counsel.

1. Criminal Law-Rights of Accused-Counsel

Situations to which *Miranda* applies are governed not by the general test of voluntariness but rather by the more precise test of whether the constitutionally required warning was given and, if given, whether the rights set out by that warning were knowingly, intelligently, and voluntarily waived. (T.T.C., Sec. 464(d)(2))

2. Criminal Law-Rights of Accused-Counsel

Where there is a request for an attorney prior to any questioning, a finding of knowing and intelligent waiver of the right to an attorney is impossible. (T.T.C., Sec. 464(d)(2)»

3. Criminal Law-Rights of Accused-Counsel

Neither the cases nor the statute obligate the police to persuade an accused that he needs counsel. (T.T.C., Sec. 464(d)(2)»

4. Confessions-Admissibility

Statements made after a knowing and intelligent waiver of counsel are admissible, however, when the accused changes his mind and requests counsel, any statement he makes thereafter is not admissible until consultation with counsel. (T.T.C., Sec. 464(d)(2)»

5. Confessions-Admissibility

Where the confession was made before the police persuaded the accused he needed counsel it was admissible. (T.T.C., Sec. 464(d)(2)»

6. Confessions-Corroborating Evidence

A confession without more is insufficient, there must be corroboration; some other evidence tending to show a crime has been committed is required.

7. Confessions-Corroborating Evidence

The criminal agency of the defendant need not be shown independently of the confession.

8. Confessions-Corroborating Evidence

Failure of eye-witnesses to identify accused as the assailant did not constitute a failure of the necessary corroboration to accused's confession.

9. Assault and Battery With a Dangerous Weapon-Dangerous Weapon

A leather shoe on the foot of a person who kicks an eye out of a victim's head is a dangerous weapon within the meaning of that term. (T.T.C., Sec. 377-A)

Assessor:

Interpreter:

Reporter:

Counsel for Prosecution:

Counsel for Defendant:

JUDGE PABLO RINGANG

KAZUMOTO H. RENGULBAI

NANCY K. HATTORI

DOUGLAS F. CUSHNIE, *District Attorney*, and E. TERMETEET, *District Prosecutor*

WILLIAM E. NORRIS, *Assistant Public Defender*, and WILLIAM O. WALLY, *Public Defender's District Representative*

TURNER, *Associate Justice*

Defendant was tried on a charge of assault with a dangerous weapon, pursuant to Section 377-A, Trust Territory Code. In a confession in writing to the investigating officers, given for the obvious purpose of making an exculpatory statement, defendant admitted kicking the complaining witness repeatedly in the head during a brawl in the notorious Boom Boom Room in Koror, Palau Islands.

It appears the complaining witness was knocked down by the defendant's brother and as he lay on the floor, was kicked by the defendant, who was wearing leather shoes. As a result of the injuries inflicted, the complaining witness suffered loss of his left eye.

Defendant in his confession said:-

"... So what I did was to try to help him (the younger brother) for there were about two men who wanted to fight with him. I just kicked the man when he tried to fight with my brother, that's all."

Two questions of law must be applied to the facts before a finding of guilt can be made. One was the admissibility of the confession and the other whether there was corroboration of the confession.

Admissibility of the confession was challenged by the Public Defender on the grounds the accused had requested counsel and that counsel had not been provided before the written statement had been made. The "Notice to Accused" used by the police as an aftermath to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 10 A.L.R.3d 974, which in turn was interpreted in *Trust Territory v. Poll*, 3 T.T.R. 387. This case was the basis for the Congress of Micronesia 1968 amendment to Section 464, Trust Territory Code.

The issue in this case arises from subsection (d) (2) :-

"That the police will, if the individual so requests, endeavor to call counsel to the jail or other place of detention and allow the

individual to confer with counsel there before he is questioned further, and allow him to have counsel present while he is questioned by the police if he so desires;"

[1,2] This is the precise recommendation made by the court in the *Poll* decision, 3 T.T.R. 387 at 401. Although *Poll* purportedly did not entirely adhere to *Miranda* on the point of requesting counsel, there is no distinction. Only the effect of the language in *Miranda*, in *Poll*, and in the Code amendment now requires interpretation. For this purpose, we adopt the United States Fifth Circuit Court's statement in *United States v. Priest* at 409 F.2d 493:-

"Situations to which *Miranda* applies, however, are governed not by the general test of voluntariness but rather by the more precise test of whether the constitutionally required warning was given and, if given, whether the rights set out by that warning were knowingly, intelligently, and voluntarily waived. *Where there is a request for an attorney prior to any questioning, as in this case, a finding of knowing and intelligent waiver of the right to an attorney is impossible.*" (Emphasis added.)

In this case, the Notice to Accused was ambiguous on its face as to whether the defendant asked for an attorney before he made his written confession.

In answer to the question: "Do you want us to send word now to counsel to come to see you here?", the accused checked "No."

But to the next question: "If so, whom do you want us to send for?", the accused had written the name of the Public Defender's representative.

Since the accused did not take the stand, the court accepts the explanation given by the officers that the accused waived counsel, saying that "Martin told us he does not need counsel, because he wanted to help or aid his brother who was being attacked."

[3-5] After the defendant wrote his statement, the officer urged him to get counsel because "he was going to court". It was then the defendant wrote in the name of the Public Defender. Neither *Miranda*, nor *Poll*, nor *Priest*, nor the statute obligate the police to persuade an accused that he needs counsel. Statements made after a knowing and intelligent waiver of counsel are admissible. However, when the accused changes his mind and requests counsel, any statement he makes thereafter is not admissible until consultation with counsel. Here the confession was made before the police persuaded the accused he needed counsel and was admissible.

[6, 7] A confession without more is insufficient. There must be corroboration. Some other evidence tending to show a crime has been committed is required. However, the Federal Court in *Forte v. United States*, 94 F.2d 236, 127 A.L.R. 1120, said:-

"The criminal agency of the defendant need not be shown independently of the confession."

[8] Here the criminal agency of the defendant was not shown, except by the confession, even though there was abundant evidence of the assault. The three eye-witnesses called by the prosecution (two Peace Corps volunteers and a fellow school teacher of the accused) were unable to identify the accused as the assailant. This amazing mental failure (the witnesses and the accused later that night slept in the same house) did not, however, constitute a failure of the necessary corroboration to the confession. A confession would not have been required if the witnesses to the assault had identified the accused as the assailant.

[9] Finally we hold that a leather shoe, on the foot of a person who kicks an eye out of a victim's head is a dangerous weapon within the meaning of that term. *Ngiraibai v. Trust Territory*, 2 T.T.R. 522.

It is the judgment of the court the defendant, Martin Sokau, is guilty of the crime of assault with a dangerous weapon and that he shall be punished therefor by imprisonment for a period of five (5) years, all of which shall be suspended on conditions.