TRUST TERRITORY OF THE PACIFIC ISLANDS
v.
YONAMI REMENGESAU, and NGEDIKES RUMONG

Criminal Cases Nos. 438 and 439
(Combined for Trial)

Trial Division of the High Court

Palau District

September 29, 1972

Motion to suppress evidence in two prosecutions combined for trial. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held there had been an effective waiver of counsel, and that the name of a person who may be a witness or even who becomes a defendant is not evidence subject to suppression as fruit from a poisonous tree; for such information, though improperly obtained in absence of a Miranda warning, is at most harmless error because there is no possibility that the information might contribute to conviction of the person named. (12 T.T.C. § 69)

1. **Arrest—Elements—Detention**

   Police detention is an arrest, even though inquiry is only being made to determine whether a charge should be filed. (12 T.T.C. § 68)

2. **Arrest—Advice of Rights**

   It was improper for police to ask arrested person who gave her counterfeit bill before they gave her a Miranda warning. (12 T.T.C. § 68)

3. **Criminal Law—Evidence—Obtained in Violation of Rights of Person Arrested**

   The name of a person who may be a witness or even who becomes a defendant is not evidence subject to suppression as fruit from a poisonous tree; for such information, though improperly obtained in absence of a Miranda warning, is at most harmless error because there is no possibility that the information might contribute to conviction of the person named. (12 T.T.C. § 69)

4. Arrest—Waiver of Counsel

Where arrested persons answered "no" to form question whether they wanted police to send word for counsel to come at that time, and wrote the name of a Public Defender's Representative in answer to next question, which was "if so, whom do you want us to send for?", and then they signed a printed waiver of counsel and wrote thereon that they would see counsel later, there was an understanding and voluntary waiver of counsel and subsequent statements were admissible.

5. Passing False Instruments—Intent

Where person accused of passing counterfeit bill did not admit or indicate that she knew the bill was counterfeit, and the prosecution did not prove she had such knowledge, there was no proof of the requisite intent to defraud and accused would be found not guilty. (11 T.T.C. § 501(2))

Assessor:	PABLO RINGANG, *Presiding Judge of the District Court*
Interpreter:	SINGICHI IKESAKES
Counsel for Prosecution:	PHILLIP W. JOHNSON, Esq., *District Attorney,* Palau; and BENJAMIN N. OITERONG, *District Prosecutor*
Counsel for Accused:	J. LEO MCSHANE, Esq., *Public Defender,* Palau; and FRANCISCO ARMALUUK, *Public Defender's Representative*

TURNER, *Associate Justice*

Yonami Remengesau was charged with the offense of passing a counterfeit twenty-dollar U.S. Federal Reserve Note which she told police she had received from the defendant, Ngedikes Rumong, who was charged with the offenses of possession and exchanging the same counterfeit note. The two cases were combined for trial and preliminary to trial, extensive hearing was held on a defense motion to suppress on the ground that the accused had given statements to the police in response to police questions before they had been informed of their so-called

Miranda rights set forth in 12 T.T.C. 68 and without being permitted to consult with counsel even though they requested they see the Public Defender's Representatives.

There have been other ambiguous rights-warning situations recently in Palau, in addition to the present case, and as a result have properly been subject to challenge by the Public Defender. *Robinson Henry and Ronny Ichiro*, Appellants, *v. Trust Territory*, Appellee, 6 T.T.R. 78; and *Trust Territory v. Tommy Singeo*, 6 T.T.R. 71.

The mimeographed "Notice to Accused" appropriately sets forth the so-called Miranda warnings codified at 12 T.T.C. 68. However, the questions arise in connection with its use—Were the warnings given before persons under arrest were asked questions by the police? Were questions asked before the arrested person had seen the Public Defender or other counsel when there was no waiver of counsel? Both of these issues were the basis of the defense motions to suppress in the present case.

[1] The courts in the United States, when considering the timeliness of the warnings contained in the Notice to Accused frequently distinguish between "investigatory" and "accusatory" stages of police questioning. *People v. Norse*, 452 P.2d 607 (Ore.); *State v. Miranda*, 450 P.2d 364 (the second Miranda trial appeal); *State v. Hunt*, 447 P.2d 896 (Ariz.). The distinction between investigatory and accusatory arose from statements in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, but when this Court applied that decision to the Trust Territory, the distinction was not noted. *Trust Territory v. Poll*, 3 T.T.R. 387. Consequently, when the *Poll* recommendations were adopted by the Congress of Micronesia, the statute required the warning be given to any person "arrested". See 12 T.T.C. 68(4) and (5). Police detention is "arrest", even though inquiry is being made to permit the police to determine whether a

charge should be filed. When there is an arrest, the warning must be given under the statute.

[2] In the present case, the police, after they arrested Yonami Remengesau, asked her, "Who gave you the counterfeit bill?" Because this was before she had been given notice of her rights, it was improper. Yonami's answer was that she had received the bill from her codefendant, Ngedikes.

The defense moved for discharge of Ngedikes because her arrest was "the fruit of the poisonous tree" in that it was the result of improperly obtained or "tainted" information.

Had the information related to a tangible object, such as illegal narcotics as was true in *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, cited in support of the motion, it would have been an entirely different situation. This information pertained to a witness, or as it turned out, a codefendant. The name of a person may or may not be significant, depending upon what that person may tell the police.

In the appeal from the second Miranda conviction, the Arizona court first defined the "fruit from the poisonous tree" phrase as "whether evidence is so connected with evidence illegally obtained as to be 'tainted' " and therefore subject to suppression. When the Arizona court distinguished between the character of the fruit, i.e., an inanimate article such as unlawful narcotics as against the name of a witness, it said:

> "But a witness is not an inanimate object which like contraband narcotics, a pistol or stolen goods, 'speak for themselves.' . . . The fact that the name of a potential witness is disclosed to the police is of no evidentiary significance."

[3] In short, the name of a person who may be a witness or even a defendant, is not "evidence" subject to suppres-

sion as "fruit from a poisonous tree." Such information, even though improperly obtained in the absence of Miranda warnings, is at most harmless error, because as was said in *State v. Childs*, 447 P.2d 304, 312 (Ore.), "There was no possibility that the evidence complained of might have contributed to defendant's conviction." *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824; *Fahy v. Connecticut*, 375 U.S. 85, 84 S.Ct. 229.

This rule of law has been codified in the Trust Territory, at least with respect to the present question as to the legality of the arrest of Ngedikes, by 12 T.T.C. 69.

[4] The defense also questioned the propriety of any police questioning without defense counsel. The issue arose from an ambiguity in the warning form. Both defendants, after receiving the Notice, answered "No" to the question: "Do you want us to send word now to counsel to come see you here?" Then, in answer to the next question: "If so, whom do you want us to send for?", each defendant wrote in the name of one of the two Public Defender's Representatives. Then, to complete the confusion, each witness signed a printed waiver of counsel and wrote in Paluan: "I will see him later."

Even though there was a conflict in answers, the Court finds from the evidence and now holds that there was an understanding, voluntary waiver of counsel. The police questioning thereafter was permissible. Written statements of both defendants were admitted in evidence.

[5] As far as Yonami Remengesau's statement and testimony is concerned, she did not admit or indicate that she knew the counterfeit note was in fact counterfeit. Without proof of this knowledge, there was no proof of intent. The statute, 11 T.T.C. 501(2), defines the offense as being "with intent to defraud." If the accused did not know the bill was counterfeit, then she could not have

passed it with intent to defraud. Failure to prove the necessary intent requires that Yonami Remengesau be found not guilty of the offense charged.

The evidence was substantially different as applied to Ngedikes. She admitted in her statement to the police, which she signed, that she knew the bill was counterfeit and that she held it from 1967 until giving it to her codefendant to use at a store in 1972. Her denials from the witness stand of her confession to the police were not convincing.

When asked if she thought the twenty-dollar bill was counterfeit when she received it, she said she "didn't recall." She also said she gave the bill to Yonami because she was afraid "I might lose it." This was five years after first receiving it.

The confession to police, amply corroborated by other evidence, is convincing beyond a reasonable doubt that defendant Ngedikes Rumong is guilty of the two offenses charged. Admittedly, the proof of guilt largely depended upon the challenged confession. We hold the confession was given after she had been informed of her rights and that she had knowingly waived the presence of counsel.