*ROP v. Recheluul*, 10 ROP 205 (Tr. Div. 2002)

**REPUBLIC OF PALAU,**
**Plaintiff,**

**v.**

**EVELYNDA RECHELUUL,**
**Defendant.**

CRIMINAL CASE NO. 02-163

Supreme Court, Trial Division
Republic of Palau

Decided: December 23, 2002

R. BARRIE MICHELSEN, Associate Justice:

The Defendant has filed a motion to suppress statements she made to the police ⊥206 following her arrest in this case. For the following reasons, the motion is granted.

## FACTS

On July 4, 2002, before 8:00 p.m., the Defendant was approached by two police officers as she was entering her car with her twelve-year old son, and arrested for possession of, and trafficking in, methamphetamine. She asked permission to make a cell phone call to her brother so that her son could be put in his care. The phone call was allowed, but the officers did not want to wait for the brother's arrival, so the son accompanied the Defendant and the police away from the public area where the arrest took place.

Because the officers hoped Defendant would be interested in cooperating with on-going police investigations and work as an informant, the officers did not take the Defendant to the jail for booking and incarceration pending a bail hearing; incarceration at that point would mean that her arrest would become generally known and she could not be effective as a confidential informant. For this reason the officers took the Defendant and her son to a hotel room. One officer stayed with her son while two officers, one male, one female, questioned the Defendant. The standard waiver-of-rights form was read, interpreted into Palauan, and explained beginning at 8:30 p.m. It was signed by the Defendant at 8:50 p.m.

The Defendant denied her guilt and expressed no enthusiasm for becoming a confidential informant. Not being able to convince her otherwise, the two officers called for their supervisor, Detective Felix Francisco, who thereafter joined the group. He reiterated what the others had said: If she failed to agree to work with the police as a confidential informant, there would be no reason to not handle her case in the usual course, and she would be taken to jail for booking and incarceration to await her bail hearing. On the other hand, if she agreed to cooperate, she would be released immediately without any booking, incarceration, or filing of charges at that time,

based upon her promise to thereafter work as an informant. Meanwhile, the son remained with the police as well. No arrangements were made by the police to have the son picked up by a family member. During the time she was in custody at the hotel, she renewed her request to call a relative regarding her son, but that request was not honored. Meanwhile, Defendant continued to decline the cooperation offer, and the discussion continued through the evening. Around 11:00 p.m., Defendant agreed to make a statement that the government now wishes to introduce and she desires to suppress.

**ANALYSIS**

1. Voluntariness

The Palau Constitution provides that "[c]oerced or forced confessions shall not be admitted into evidence." Palau Const. art. IV, § 7. The common law excluded evidence of a confession if the pressure exerted on the suspect was such that a person might be induced to untruthfully confess to a crime. *See Culombe v. Connecticut*, 81 S. Ct. 1860, 1868 (1961). "Gradually, however, the American courts recognized the tension between coerced confessions and the constitutional privilege against compulsory self-incrimination, which exists regardless of the reliability of the confession. Quite apart from testimonial unreliability, the courts began to focus on the issue of voluntariness and, where it appeared that the statement resulted from coercion, refused to admit it ⊥207 into evidence." 2 David S. Rudstein, et al., *Criminal Constitutional Law* § 4.01(2), at 4-5 (2001).

The Trust Territory High Court always considered the voluntariness issue. Enforcing the Trust Territory Bill of Rights provision that no "person [shall] be compelled in any criminal case to be a witness against himself," 1 TTC § 4, the Court required an affirmative showing that a confession was voluntary for it to be admissible. *Haruo v. Trust Territory*, 1 TTR 565, 569 (App. 1952). Confessions considered coerced were excluded. *Rungun v. Trust Territory*, 1 TTR 601 (App. 1957). After the High Court's decision in *Trust Territory v. Poll*, 3 TTR 387 (Tr. Div. 1968), and the adoption that same year of the statute now codified at 18 PNC § 218, standardized warnings were required to be given to suspects in custody before any questioning. However, even if such warnings were provided, statements would be still inadmissible upon "a showing by the accused he had been unfairly imposed upon, and that as a result, his signature was not voluntarily written." *Ridep v. Trust Territory*, 5 TTR 61, 65 (Tr. Div. 1970). The Palau Constitution has made this requirement a constitutional doctrine by an express rule of exclusion for all coerced or forced confessions, regardless of whether the statement was given after an advice of rights, and without a separate inquiry whether such statements were truthful.

Voluntariness of a confession is determined by the totality of the circumstances. *Poll*, 3 TTR at 402. The "totality of the circumstances" has also been used in this Court to determine whether a confession is admissible. *In re Temol*, 6 ROP Intrm. 326, 328 (Tr. Div. 1996).

A variety of factors are considered when determining whether a statement is voluntary, and they fall into two groupings; one is concerned with the capacity of the suspect, and the other with the acts of the government. The capacity of the accused to knowingly and voluntarily make statements varies with age, intelligence, health, and impairment due to drugs or alcohol. The age

of the accused is considered because juveniles will be more susceptible to intimidation or pressure. Persons of limited intelligence, or those who are ill during the questioning, may not be in a position to make truly volunteered statements. Statements by persons who are under the influence of liquor or drugs, legal or illicit, may be considered involuntary if the liquor or drugs affected the declarant's ability to make a statement knowingly and voluntarily.

The conduct of the police during questioning is also considered. Physical abuse, threats, deceit, and promises made that cannot be fulfilled can render statements obtained by such tactics inadmissible.[1]

In this case, none of the above factors are present. Defendant is a mature woman who was employed as a teacher. She is not of limited intelligence, was not ill at the time of questioning, nor was she under the influence of either drugs or liquor. The police are not accused of any physically-abusive tactics. They made no threats, did not misinform, and made no promises they could not keep. The duration of the talks at the hotel, while lengthy, was not inordinate.

Defendant's objections to the officers' actions focus on two issues. First, Defendant argues that keeping her son in custody worked ⊥208 an additional psychological pressure on her to cooperate because of the uncertainty of what would happen to him if she were incarcerated. Second, she suggests that the purpose of this questioning and pressure was not for the purpose of securing her cooperation as an informant, but rather was for the purpose of obtaining a confession.

As to the first objection, the child was not allowed to leave, but the investigating detectives assigned an officer, at least for part of the time, to keep him occupied with activities. The questioning of the police did not focus Defendant's attention on the problems of the child if the Defendant was booked and jailed, nor did they suggest that he would remain in government custody after that point.

Defendant's second argument is that the goal of the discussions at the hotel was to obtain a confession and was not merely a selling effort to recruit Defendant as an informant. However, Defendant's Exhibit B, which contains her statement that she seeks to suppress, makes no mention of the facts and circumstances surrounding her arrest, but rather discusses other incidents, and other names, concerning methamphetamine. These statements are consistent with the government's position that the object of the hotel discussions was the recruitment of an informant and the expectation that the potential informant name names at the outset, as distinguished from a custodial interrogation whose purpose is to elicit a confession for the arrested offense. In fact, there is such a disconnect between the alleged facts charged in the information with the written statements of Defendant that it is an open question whether the statements would be admissible in the government's case in chief. I must therefore reject Defendant's argument that the prolonged effort at recruiting Defendant as an informant was a psychological tactic aimed at obtaining a confession for this case.

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[1]For a fuller discussion of the relevant factors and citation of cases, see Rudstein, *supra*, at 4-8 to 4-17.

This is not to say that the Defendant was not under pressure. A suspect arrested for a crime that carries a stiff sentence has a strong incentive to cooperate. The pressure is increased where, as here, a conviction would result in a minimum mandatory jail sentence of 25 years that can only be avoided if the Defendant cooperates with on-going police investigations. If that knowledge creates pressure that results in a decision to make incriminating statements, such statements are admissible unless police misconduct or factors concerning the suspect's age, physical, or mental condition impair the suspect's ability to voluntarily make a statement.

2. Advice of Rights

Defendant's motion to suppress also has a statutory component. Pursuant to 18 PNC § 218(a) an arrested person has a right to see, or send a message to, the arrestee's counsel, family, or employer "provided the arrested person so requests and the message can be sent without expense to the government or the arrested person prepays any expense there may be to the government."[2] Telephone messages are specifically mentioned.

Title 18, § 220 provides that "no evidence obtained as a result of [a] violation [of § 218] shall be admissible against the accused." This statute was usually strictly interpreted by the Trust Territory High Court. Evidence obtained was excluded unless the arresting officers had complied with its ⊥209 provisions. *Loney v. Trust Territory* , 8 TTR 318, 322-23 (App. 1983); *Trust Territory v. Techur* 8 TTR 412 (App. 1976); *Trust Territory v. Abija* , 8 TTR 102, 103 (Tr. Div. 1979). *But see Trust Territory v. Monu* 7 TTR 620 (App. 1978) (holding that the failure to advise arrestee that he had a right to be charged or released within 24 hours of arrest was not pertinent in case when Defendant was already charged at time of arrest).

Defendant testified that while at the hotel room she made another request to be allowed to call her brother to arrange for him to come pick up her son, but that the officers denied her request. This testimony is credible. In fact it would be highly unlikely that, faced with extended discussions, Defendant would not have renewed her request to talk to her brother about picking up her son. She also testified that the denial of that phone call was a significant factor in her decision to finally relent and make a statement. The Government's failure to honor that reasonable request was a violation of § 218.

Accordingly, Defendant's statements are hereby suppressed as taken in violation of § 218.

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[2]The historical background of this statute was discussed in *ROP v. Imeong*, 7 ROP Intrm. 257, 259 (Tr. Div. 1998). [*Editor's note: Original opinion incorrectly cited case as 8 ROP Intrm. 257, 259 (Tr. Div. 1998).*]