Republic of Palau v. Imeong, 7 ROP Intrm. 257 (Tr. Div. 1998)

REPUBLIC OF PALAU,
Plaintiff,

v.

OSTAVIUS IMEONG,
Defendant.

CRIMINAL CASE NO. 279-97

Supreme Court, Trial Division
Republic of Palau

Hearing: June 19, 1998
Decided: August 10, 1998

Counsel for Government: Kathleen Salii, Acting Attorney General

Counsel for Defendant: Yukiwo Dengokl

BEFORE: R. BARRIE MICHELSEN, Associate Justice.

Defendant has moved to suppress all statements he made to the police on the day of his arrest. He asserts that the police obtained statements from him after he was arrested and prior to informing him of his right to remain silent. 18 PNC § 218(b). [1] Evidence obtained as a result of the failure of the government to advise an arrested person of the right to remain silent, and to counsel, is inadmissible. 18 PNC § 220.[2] He further argues that the statements he made after the police provided the necessary warnings are also inadmissible because they are tainted by the initial questioning.

FACTUAL BACKGROUND

On September 22, 1997, the Government obtained a search warrant to look for firearms

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[1] "(b) [A]ny person arrested shall be advised as follows:

(1) that the individual has a right to remain silent;
(2) that the police will, if the individual so requests, endeavor to call counsel to the 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; and
(3) that the services of the public defender, when in the vicinity of his local representative, are available for these purposes without charge."

[2] "No violation of the provisions of this title shall in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused . . ."

allegedly possessed by Defendant in violation of the National Firearms Control Act. 17 PNC § 3301 *et seq*. The search warrant authorized a search of Defendant's Toyota Corolla and his home. He moved to suppress evidence obtained as a result of the search of his home. The Government does not oppose that motion and concedes that no probable cause existed to support the issuance of the search warrant.[3] That motion was therefore granted.

⊥258 Before executing the search warrant, police officers looked for, and found, Defendant. He was driving a truck at the time he was stopped by the police. The police then searched the vehicle. However, because the truck was not the vehicle mentioned in the warrant, the police had no warrant-based authority to search the vehicle. [4] They also had no justification to stop the vehicle, since an officer must have probable cause to suspect on-going unlawful conduct to justify a traffic stop. *United States v. Hassan El* , 5 F.3d 726, 729 (4th Cir. 1993) [*citing Terry v. Ohio*, 88 S.Ct. 1868 (1968)]. The investigating officers required Defendant to accompany them to his residence while they executed the warrant.

Upon arrival at his house, Defendant was asked whether he had any firearms, and when he denied it, Officer Francisco handed the search warrant to him and informed him that they were going to search his house for firearms. Defendant then conceded that there were guns in the house. The officers and the Defendant proceeded inside. Officer Francisco asked again where the firearms were located, suggesting that it would be best if the house was not placed in disarray as a result of the search. Defendant thereupon informed him that the firearms were inside a bedroom in a sleeping bag, and Officer Francisco orally advised Defendant of his rights. Defendant then directed the officers to the sleeping bag in the room where the firearms were kept. Transported to the police station, Defendant was then advised of his rights again, this time in writing, and made further statements the Government wishes to use against him.

LEGAL ANALYSIS

Defendant argues that at the time of the original vehicle stop, the obligation of the police to inform him of his right to remain silent and of his right to counsel had already attached. All subsequent statements, he argues, are a product of that original interrogation, and the fact that he was "read his rights" later does not render the later statements admissible. The Government argues that Defendant was not in custody at the time of the original vehicle stop when the initial statements were made, and that Defendant was properly warned before he was questioned in custody, so that all the challenged statements are admissible.

The initial task is to determine at what point was Defendant "arrested" and therefore entitled to be advised of his rights. This requires an examination of legislative intent to

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[3] The Government decided not to argue for the application here of the reasoning in *United States v. Leon*, 104 S.Ct. 3405, 3420 (1984) (evidence obtained as a result of a warrant lacking probable cause should not be suppressed if the executing "officers' reliance on the magistrate's probable cause determination and on the technical sufficiency of the warrant he issues [is] objectively reasonable."). The Government believes the investigating officer did not disclose certain pertinent facts to the issuing judge.

[4] The search did not discover any incriminating evidence.

determine when a person is "arrested" for purposes of section 218.

The "advice of rights" portion of section 218 was originally adopted by the Congress of Micronesia in August 1968 as part of P.L. 4-5. The previous January, Chief Justice Furber, sitting as a trial division justice of the High Court, noted that Trust Territory statutory law did not afford a suspect in custody the warnings required to be given to an accused in the United States by virtue of the Supreme Court's decision in *Miranda v. Arizona* 86 S.Ct. 1602 (1966). *Trust Territory v. Poll* 3 TTR 387 (Tr. Div. 1968). In order to effectuate the protection against self incrimination provided by Trust Territory law, the Chief Justice announced that effective 90 days from the date of his opinion he would thereafter apply the standards enunciated in Justice Clark's opinion in the *Miranda* case. However, he hoped that the Court would "have the aid of both the executive and legislative branches in determining how far ⊥259 conditions here require that variations be made in the interest of [the] practical administration of justice." *Id.* at 398. In that regard, he made "very specific" recommendations regarding the wording of such legislation. *Id.* at 400-02. These recommendations were adopted verbatim when P.L. 4-5 was enacted a few months later, and with some changes in phrasing, the law repeats the warnings required under the *Miranda* decision.

The statutory provisions of P.L. 4-5 (now codified at 18 PNC § 218, and prior to that at 12 T.T.C. § 68) have been the standard that courts here have subsequently used to determine the sufficiency of warnings and whether evidence should be suppressed. *See, e.g. Trust Territory v Kaneshima*, 4 TTR 340 (Tr. Div. 1969); *Trust Territory v. Sokau* , 4 TTR 434 (Tr. Div. 1969); *Ridep v. Trust Territory* , 5 TTR 61(Tr. Div. 1970); *Henry v. Trust Territory* , 6 TTR 78 (Tr. Div. 1972); Trust Territory v Remengesau, 6 TTR 94 (Tr. Div. 1972); *Loney v. Trust Territory*, 8 TTR 318 (App. Div. 1983); *In re Temol*, 6 ROP Intrm. 326 (Tr. Div. 1996).

In light of Chief Justice Furber's opinion in *Poll*, and the language of the statute, it is clear that Section 218 provides, like the *Miranda* decision,

> a series of recommended procedural safeguards . . . [that] were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected.

Davis v. U.S., 114 S.Ct. 2350, 2354 (1994) [quoting *Michigan v. Tucker*, 94 S.Ct. 2357, 2363-64 (1974). Section 218(b) of Title 18 can therefore be said to be a legislative adoption of the substance of the *Miranda* decision,[5] and United States federal court decisions discussing the

[5] Section 218(a) provides additional protections beyond those provided by Miranda. A detained person must also be informed of the right to see or contact counsel, family members, and/or the detainee's employer, as well as the right to either be charged with a crime or released within 24 hours. The section addresses a problem *Miranda* does not; an "anomaly" of the *Miranda* decision. It "condemned incommunicado custodial interrogation, absent a warning of the rights, as inherently coercive. But if did not forbid incommunicado interrogation, so long as the prescribed warnings were given and a valid waiver made." David S. Rudstein, et al. Criminal Constitutional Law ¶ 4.02[6][a] at 4-64, 4-65 (Oct. 1970). By requiring police to inform the arrestee of the right to be in contact with family, legal counsel, and employer, Section 218(a)

Miranda rule may be considered when construing the Palau statute.

The rights described in Section 218 apply to "any person arrested." The determination of whether a police encounter has become a " *de facto* arrest" may involve in some cases "difficult line drawing." *United State v. Sharpe* 105 S.Ct. 1568, 1575 (1985). In making that determination "common sense and ordinary human experience must govern over rigid criteria." *Id.* The general rule is that

> [a]n arrest takes place when, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. The question here is not whether the officer intended to arrest defendant. Nor is the question whether defendant subjectively perceived that he was under arrest, for the test is ⊥260 stated in objective "reasonable man" terms.

ROP v. Gibbons, 1 ROP Intrm. 547A, 547N (1988) (citations omitted).

It is the arrest that triggers the right to warnings pursuant to Section 218; the same event that triggers warnings under the *Miranda* decision, because in United States federal law

> [t]he meaning of custody has been refined so "the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." The Supreme Court has also explained that the "the only relevant inquiry is how a reasonable man in the suspect's position would have understood the situation."

U.S. v. Bengivenga, 845 F.2d 593, 596 (5th Cir. 1988) (en banc) (citations omitted).

Applying the above principles to the factual circumstances presented here, this is not a close case. The police stopped Defendant, informed him that they had a search warrant, searched his vehicle, then required him to return to his residence for the execution of the warrant. The only reasonable conclusion for him to reach was that he was under arrest. Therefore, all statements made by Defendant prior to being advised of his rights are must be suppressed. 18 PNC § 220.

Defendant argues that his later statements made after the warnings were given also should be suppressed. However, "[a] suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after warnings." *Oregon v. Elstad* , 105 S.Ct. 1285, 1298 (1985). The majority opinion in the *Elstad* decision reasoned that "absent deliberately coercive or improper tactics in obtaining the initial statement," the only question is whether the defendant made a rational and intelligent choice to waive his *Miranda* rights before making a subsequent statement. *Id.* at 314 at 1295. Had Elstad's first confession been secured through actual coercion sufficient to raise due process concerns, the Court would then have examined whether there had been a sufficient "break in the stream of events" to insulate the second confession from the earlier taint. *Id.* at 1293.

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makes the suspect aware that he need not be cut off from outside contact.

Under the *Elstad* test, the first determination is whether Defendant's initial statements were elicited by official coercion. Here, Defendant's post-warning statements were not coerced. Defendant argues that his later statements were made because the cat was out of the bag. He had already made damaging admissions, so even after warnings are given he might as well repeat and elaborate on the earlier statements. The *Elstad* court rejected this argument and under Palau law it also should be rejected. By its terms, 18 PNC § 220 requires only the suppression of statements made before warnings.

The only remaining issue is whether Defendant knowingly and intelligently waived his rights prior to the questioning. Defendant admits that he was given complete warnings before making his subsequent statements and does not challenge his capacity to waive his rights intelligently. Indeed, at the police station he exercised his right not to put his statements in writing, and he indicated that he would make only oral statements. As a result, his post warning statements to the police are -- like the second confession in *Elstad* -- properly admissible as evidence.

Defendant's related argument is that his admissions are the product of the improper ⊥261 search. He argues that but for the improper search warrant the officers would not have been questioning him. The connection between the two events is not a "but for" proposition. Police had strong suspicions, based upon an informant, that Defendant was in possession of two handguns. Furthermore, the informant told police that Defendant had brandished one of the weapons and threatened to kill him. Police had every right to contact Defendant and ask questions about those accusations. If the questioning occurred, as it did here, during a *de facto* arrest, the police were obligated to provide the Defendant with the Section 218 warnings. Therefore, Defendant's post-warning statements are admissible, and declarations made before the warnings were given are not.

In summary, Defendant's motion is granted to the extent that any and all statements Defendant made prior to being informed of his Section 218 rights are suppressed. If the Government can demonstrate that statements were made after Defendant was informed of his rights, and that Defendant waived those rights, any subsequent statements may be admitted.