KACHUICHY ERAM, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 214

Trial Division of the High Court

Truk District

March 25, 1968

Appeal from conviction of disturbing the peace. The Trial *Division* of the High Court, E. P. Furber, Temporary Judge, held that based upon the record on appeal, the court could not find that there was any enol' in the admission of the accused's confession.

Affirmed.

1. Appeal and Error-Generally

   In an appeal the burden is on the appellant to affirmatively show that there has been some error and that he has been *prejudiced* thereby. (T.T.C., Sec. 337)

2. Confessions--Admissibility-Illegal Custody

   The mere fact that an accused was *in* custody of the police when he made his confession does not make *it* inadmissible; nor does any illegal detention there may have been after the confession was given make *it* inadmissible.

3. Criminal Law-Complaint-Warrant of Arrest

   The fact that an accused is not prepared to post Lail is not a proper reason for delay in bringing him before a court or official authorized to issue a warrant.

4. Criminal Law-Complaint-Warrant of Arrest

   COUlts and officials authorized to issue wal'l'ants have an obligation to give effect to the policy that in the case of offenses punishable by not more than one hundred dollars fine or six months' imprisonment or both, a penal summons shall be issued in place of a warrant of arrest unless there *is* special reason to believe that the public *interest* requires arrest. (T.T.C., Sec. 450)

FURBER, *Temporary Judge*

This is an appeal from a conviction of Disturbing the Peace and turns primarily on the admissibility of the appellant's confession.

The presentation of this appeal has been most disheartening to me. It was argued on both sides by counsel who are among the better educated and more experienced trial assistants in the Trust Territory. Yet both appear to have relied on the court to look behind the record in its frequently stated desire to see that litigants receive substantial justice. Neither had apparently used the diligence that is to be expected in seeing to it that the necessary facts were set forth accurately in the record to support their claims.

Counsel for the appellee had expressly stated in this court that he was satisfied with the appellant's draft report and was ready to have the appeal heard on the basis of it. On that assurance the trial judge had adopted the report. Yet at the very start of his argument, counsel for the appellee stated that the report was in error as to one point relied on by counsel for the appellant.

Counsel for the appellant, either in drafting the report of the trial or in the trial itself, failed to state accurately the ground of his objection to certain evidence and in another instance failed to indicate whether any objection had been raised. Even in his argument in this court he left much to inference. He argued strongly for a perfectly sound principle of law, which would apply only if there were additional facts not shown in the record. Apparently he hoped that the court would ferret out these additional facts somehow.

These loose practices by trained trial assistants is considered an undue imposition on the court. It is believed the time has come when trial assistants with substantial tra,ining should be expected to use greater diligence in preparing appeals and having taken care to see that the record accurately sets forth the facts on which they rely, should then restrict their arguments to matters shown in the record. 4 Am. Jur. 2d, Appeal and Error, § 493.

[1] In an appeal the burden is on the appellant to af. firmatively show that there has been some error and that he has been prejudiced thereby. *Amis v. Trust Territory* 2 T.T.R. 364. 5 Am. Jur. 2d, Appeal and Error, §§ 704, 780, 782,839,840. T.T.C., Sec. 337.

The appellant's main contention here appears to be that his confession was obtained while he was under illegal detention because, after his arrest on a warrant, he was not brought without unnecessary delay before a court or official authorized to issue a warrant as required by Trust Territory Code, Section 463 (as amended by P.L. 2-13, September 2, 1966). The court fully agrees that if this were so, the confession would be inadmissible under the doctrine of *McNabb v. United States,* 318 U.S. 332, 63 S.Ct. 608 (1943), which Trust Territory Code, Section 498, expressly makes applicable to any evidence obtained in violation of Chapter 6 of the Code, of which Section 463 is a part.

[2] The record fails to show where the appellant was arrested, or when he was placed in jail, or at what time on the next day his confession was made, or, for that matter, when he was first brought before a court or official authorized to issue a warrant after his arrest. There is not even any evidence in the record that the confession was made "after appellant had been in jail for approximately twenty-four hours" as claimed in the notice of appeal. The mere fact that the appellant was in custody of the police when he made his confession does not make it inadmissible; nor does any illegal detention there may have been after the confession was given make it inadmissible. *United States v. Mitchell,* 322 U.S. 65, 64 S.Ct. 896 (1944). As stated in *Joseph v. United States,* 239 F.2d 524,527 (1957).

"A confession, in short, is not made involuntary and inadmissible by the fact alone that it was obtained before the defendant was

taken before the commissioner. It must be shown, and the burden is on the defendant to show it, that the failure promptly to carry a prisoner before a committing magistrate, constituted unnecessary and, therefore, unlawful detention for the illegal purpose and with the illegal result of inducing the confession."

See also: *Pierce v. United States,* 197F.2d 189 (1952). *United States v. Leviton,* 193 F.2d 848 (1951).

It would seem that the appellant did not even attempt to sustain that burden.

To try to determine whether substantial justice required some extraordinary action, the court called upon both counsel for further information. From the counsel for the appellee's statements, not contradicted by counsel for the appellant, it would appear that there was illegal detention here while attempt was being made to arrange suitable bail, but that this began after the confession was given. If true that would bring the case squarely within the holding in *United States v. Mitchell,* cited above.

[3] This court has previously held and tried to make abundantly clear that the fact an accused is not prepared to post bail is not a proper reason for delay in bringing him before a court or official authorized to issue a warrant. It is also hard to understand why a warrant of arrest was ever issued in this case in view of the policy set forth in Trust Territory Code, Section 450.

[4] Courts and officials authorized to issue warrants have a strong obligation to give effect to the policy there laid down by legislative authority to the effect that in the case of offenses punishable by not more than one hundred dollars ($100) fine or six months imprisonment or both, a penal summons shall be issued in place of a warrant of arrest unless there is special reason to believe that the public interest requires the arrest. The reason for the illegal detention after the confession was given makes no difference in this case, however, and in the absence of

any issue raised about the warrant of arrest and evidence about it, the court must assume it was properly issued.

The court therefore holds that the appellant has not sustained the burden of showing any error in the admission of the confession. By judgment entered this day the finding and sentence in question are being affirmed: