In the Matter of PANDA SANTOS, a Juvenile

Civil Appeal No. 236

Appellate Division of the High Court

Ponape District

June 12, 1978

Prosecution for burglary and grand larceny in which defendant appealed. The Appellate Division of the High Court, Gianotti, Associate Justice, held that probable cause for arrest without a warrant could be based on informant's statement to arresting officer that defendant had been involved in break-in three days before arrest.

1. **Arrest—Arrest Without Warrant—Probable Cause**

   Probable cause to arrest without a warrant existed where officer indicated an informant had advised him arrestee was involved in a break-in three days before the arrest. (12 TTC § 61)

2. **Confessions—Admissibility—Waiver of Right**

   Defendant who, following arrest, signed a statement and a standard notice that he had been advised of his rights, and who did not show at trial that he had been unfavorably imposed upon and that as a result his signature was not voluntary, was not entitled to have statement suppressed at trial, and verbatim translation of statement was also admissible.

3. **Burglary—Evidence—Inventory**

   In trial for burglary and grand larceny, inventory of employee and supervisors of establishment broken into was relevant and material and properly admitted.

4. **Witnesses—Refreshment of Recollection—Items Not Admitted in Evidence**

   It was proper for officer who had arrested defendant in criminal proceeding to refresh his recollection regarding the time of arrest by the use of proposed exhibit not admitted into evidence.

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Counsel for Appellee: MINOR POUNDS, ESQ., *District Attorney,* Ponape District

Before BURNETT, *Chief Justice,* GIANOTTI, *Associate Justice,* and NAKAMURA, *Associate Justice*

GIANOTTI, *Associate Justice*

This is an appeal from a Juvenile Matter arising in Ponape District. Appellant, at the time of the incident alleged, was 16 years of age. Appellant was arrested on June 22, 1977, and on June 23rd, was charged by Juvenile Complaint with the crime of burglary and grand larceny. The arrest was made without a warrant and upon his apprehension appellant was taken to the Ponape Police Station; questioned about the incidents surrounding the criminal charges; and subsequently made a written statement admitting the incident alleged. Trial was held in the Trial Division of the High Court, Ponape District. Appellant was found guilty and has appealed from the findings of the High Court. The matter was submitted to the Appellate Division without argument and without brief filed by respondent.

The appellant has raised three issues:

I

Was the arrest of the defendant unconstitutional and should any exhibits introduced into the trial have been excluded?

The appellant, throughout the trial and appeal by his brief, has taken the stand, and not too affirmatively, that the arrest was illegal. He further maintains the subsequent detainment by the arresting officer "was unconstitutional." In support of his argument, appellant has gone extensively into the case of *Brown v. Illinois*, 95 S.Ct. 22–54. However, this is not the important question to be decided. The important question was, whether the officer had a right to make an arrest without an arrest warrant? Yes, this right is provided by 12 TTC 61(3) and (4), holding that arrest without a warrant is authorized in the following situations:

(3) When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be ar-

rested has committed it, such policeman may arrest the person without a warrant.

(4) Policemen, even in cases where it is not certain that a criminal offense has been committed, may, without a warrant, arrest and detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony.

See also *Trust Territory v. Kaneshima*, 4 T.T.R. 341/347.

The usual rule is that a peace officer may arrest without a warrant, one believed by the officer, upon reasonable cause, to have been guilty of a felony. *United States v. Watson*, 423 U.S. 411, 96 S.Ct. 820; *Carroll v. United States*, 267 U.S. 132/136, 45 S.Ct. 280/286.

In the case of *Henry v. United States*, 361 U.S. 98, 80 S.Ct. 168, the Court declared:

The necessary inquiry, therefore, was not whether there was a warrant or whether there was time to get one, but whether there was probable cause for the arrest.

[1] Clearly there was probable cause in this case. The testimony of the arresting officer, Manasa Hedgar, a detective with approximately 5 years experience, indicates that an informant had advised the officer appellant was involved in a break-in on June 19th at the Takatik Bar, Ponape. This is sufficient to allow an arrest to be made without a warrant. The arrest, therefore, was not illegal.

Appellant, at the time of his arrest on June 22nd, made a written statement admitting his involvement in the alleged break-in (Trial Exhibit No. 1). This statement was translated into English (Trial Exhibit No. 2). The statements appear to have been made after the appellant's rights were explained to him by the arresting officer. The officer, in his testimony at trial time, stated, "I told him (appellant) the contents of the papers." These related to appellant's rights.

Appellant raised the argument that he was not charged until the day following his arrest; however, there is no evi-

dence before the Court to determine whether a 24-hour period had passed. However,

> Even if a detention beyond the 24-hour period from the time of arrest is considered to be unlawful under the statute, nevertheless, the evidence adduced in this case shows the accused's incriminating statement was made within 24 hours of his arrest and that detention beyond that period did not constitute coercion sufficient to create an involuntary, and therefore, inadmissible statement. *Trust Territory v. Kaneshima,* supra.

Appellant's arrest, therefore, was not illegal, and the statements adduced therefrom were not improperly taken.

II

The second issue raised by the appellant was whether the Court erred in admitting certain written statements.

[2, 3] An examination of the file indicates that Exhibit Nos. 1 and 2 were the statements made by the appellant at the time of his arrest and after he had been properly advised of his rights (see transcript). Exhibit No. 4 was the inventory of the K.C.C.A. employee and supervisors of the Takatik Bar.

> By his signature to the statement and his signature to the standard notice to the accused, the writings were admissible, absent a showing by the accused he had been unfavorably imposed upon and that as a result his signature was not voluntarily given. *Ridep v. Trust Territory,* 5 T.T.R. 61/65.
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> Generally speaking, a voluntary confession which has been reduced to writing is admissible in evidence, provided it has been signed by the defendant. 29 Am.Jur.2d *Evidence,* Section 532.

The statement of the appellant was admissible and a verbatim translation (Exhibit No. 2) is also admissible. Exhibit No. 4 was objected to as being irrelevant and immaterial, however the relevancy and materiality are obvious from the testimony, and Exhibit No. 4 is admissible.

III

[4] Finally, appellant argues that the witness should not have been allowed to read the contents of certain documents into the record, and cites, to some length, the case of *Helgenberger v. Trust Territory*, 4 T.T.R 530. However, the testimony objected to was certain testimony of the arresting officer, Manasa Hedgar, and the use of proposed Exhibit No. 3 to refresh the Officer's recollection as to the time of appellant's arrest (Exhibit No. 3) was not admitted into evidence. Further, the transcript shows an absence of any testimony by the arresting officer as to Exhibit Nos. 1, 2 and 4, which were admitted. The witness was allowed to refresh his recollection.

Refreshing a witness' recollection by memorandum or prior testimony is perfectly proper trial procedure and control of the same lies largely in the Trial Court's discretion.

Again, proper foundation requires the witness' recollection to be exhausted, and that the time, place and person to whom the statement was given be identified. When the Court is satisfied that the memorandum on its face reflects the witness' statements, or one the witness acknowledges, and in his discretion the Court is further satisfied that it may be of help in refreshing the person's memory, the witness should be allowed to refer to the document. It then becomes proper to have the witness, if it is a fact, to say that his memory is refreshed and, independent of the exhibit, testify what his present recollection is. *Helgenberger v. Trust Territory*, 4 T.T.R. 530/537, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 232, 60 S.Ct. 811.

The use of Exhibit No. 3 by the witness to refresh his recollection was, therefore, proper.

Appellant's arguments are not well taken, and the Judgment of the Trial Court is hereby AFFIRMED.