

compel prosecution of the indictment, since such a direction would invade the traditional separation of powers doctrine. And if the indictment continues to remain in status quo, each defendant would be in a position to move for dismissal of the indictment under Rule 48 (b)." *United States v. Greater Blouse, Skirt & Neckwear Contractors Ass'n.*, 228 F.Supp. 483.

A dismissal under Rule 48(b) (Section 492 of the Trust Territory Code), would be a dismissal with prejudice, would prohibit any refileing of the same charge, and thus fulfill the intent of Rule 48(a) (Section 491, Trust Territory Code).

The motion to dismiss is granted, and the defendants discharged.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

YUSHIN KANESHIMA

Criminal Case No. 323

Trial Division of the High Court

Palau District

April 17, 1969

Prosecution for unlawful entry into Trust Territory waters and unlawful removal of marine resources. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that accused's statement and items seized by police incident to arrest were admissible against accused and established his guilt and because of the special nature of marine life statutory authority for confiscation by government was not necessary.

1. Statutes-Construction

The interpretation of any statute requires ascertainment of a meaning that will produce a reasonable result, when that is possible, rather than an absurd or strained result.

2. Criminal Law-Arrest for Examination-Charge

The meaning of "charge" in Section 464, Trust Territory Code, is interpreted in the sense that the accused is informed of the accusation to be made against him and not that a complaint or formal written information has been filed with the court. (T.T.C., Sec. 464)

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3. Criminal Law-Arrest for Examination-Charge

The statutory provision requiring that a person arrested shall be charged or released within 24 hours of his arrest means that he shall be informed of the nature of the formal criminal complaint to be brought against him "within reasonable time", such time being as soon as circumstances permit making a formal written complaint and bringing the accused before a committing judge or official. (T.T.C., Sec. 464)

4. Confessions-Admissibility-Illegal Custody

The lawfulness, or unlawfulness, of the detention of an accused person beyond a 24-hour period without a formal complaint before a court may be one of the circumstances bearing on the admissibility of any incriminating statement the accused may have made during his detention. (T.T.C., Sec. 464)

5. Confessions-Admissibility-Illegal Custody

A statement made within 24 hours of the time of arrest may be considered voluntarily made, assuming the accused is fully apprised of his rights. (T.T.C., Sec. 464)

6. Confessions-Admissibility-Illegal Custody

A statement made after more than 24 hours' detention without charge is suspect, is prima facie obtained by coercion, subject, always, however, to the entitlement of the prosecutor to negative coercion by an appropriate showing. (T.T.C., Sec. (64)

7. Criminal Law-Arrest for Examination-Charge

The charge brought against the accused in question, informing him he would be accused in a formal proceeding with violation of two sections of the Code, was sufficient compliance with Section 464 under the circumstances even though it was not a literal compliance with the statute. (T.T.C., Sec. 464)

8. Confessions-Admissibility-Illegal Custody

Where accused's incriminating statement was made within 24 hours of his arrest the detention beyond that period did not constitute coercion sufficient to create an involuntary, and therefore inadmissible statement. (T.T.c., Sec. 464)

9. Arrest-Arrest Without Warrant

Section 457, Trust Territory Code, authorizes arrest without warrant by a policeman who has "reasonable grounds" to believe a criminal offense has been committed. (T.T.C., Sec. 457)

10. Search and Seizure--Generally

Section 460, Trust Territory Code, authorizes searches in connection with an arrest and seizure of the "fruits" and "evidences of the criminal offense".

11. Search and Seizure--Search and Seizure Incident to Arrest

Code provisions justified admission of exhibits which by themselves, as distinguished from corroboration of the admission of the accused, were

- sufficient to warrant guilty verdicts on the information. (T.T.C., Sees. 457,460)
12. Criminal Law-Forfeiture and Penalty-Confiscation
Normally, confiscation of contraband or the instruments employed in criminal activity is governed by statute.
 13. Criminal Law-Forfeiture and Penalty-Generally
Provision for forfeiture of a vessel together with her apparel, tackle, furnishings and equipment is found in Section 883, Trust Territory Code. (T.T.C., Sec. 883)
 14. Criminal Law-Forfeiture and Penalty-Forfeiture
Forfeiture is defined as "divesture of property without compensation" by means of an action against the property itself. (T.T.C., Sec. 883)
 15. Criminal Law-Forfeiture and Penalty-Confiscation
Confiscation of cargo as an incident to criminal conviction is not within either the definition of or statutory provision for forfeiture. (T.T.C., Sec. 883)
 16. Criminal Law-Forfeiture and Penalty-Penalty
A "penalty" as distinguished from forfeiture, is defined as a punishment by way of a pecuniary exaction from the offender imposed and enforced by the state for a crime against its laws.
 17. Fish-Unlawful Operation of Vessel-Penalty
The only pecuniary exaction permitted by the Trust Territory Code for unlawfully operating a fishing vessel in Trust Territory waters are fines not exceeding \$10,000 for each offense. (T.T.C., Sec. 882)
 18. Fish-Unlawful Operation of Vessel-Penalty
There is nothing in the Code authorizing either forfeiture or confiscation as a penalty of the cargo of a fishing vessel unlawfully operating in Trust Territory waters, however, because of the special nature of marine life such statutory authority for confiscation is not necessary.
 19. Fish-Ownership
Ownership of fish and marine animals is lodged in the people governing or controlling the waters in which the marine life is found.
 20. Fish-Ownership
A fisherman who lawfully catches fish acquires title when he reduces them to possession, but one who unlawfully catches fish within three miles of the coast or island reef acquires no title.
 21. Fish-Ownership
Defendant, convicted of unlawfully entering Trust Territory waters and for the removal of marine resources obtained his cargo in violation of law and therefore acquired no title to it, rather the title remained in the government of the Trust Territory, held by it in trust for the people of Micronesia. (T.T.C., Sees. 875, 881)

TURNER, *Associate Justice*

The accused was charged and tried on two counts of unlawful entry into Trust Territory waters and one count of unlawful removal of marine resources. He was the captain of the Okinawan fishing vessel, Kiyoshin Maru No. 23. Although the chief engineer was taken into custody with the captain, neither he nor the crew of 17 men were charged.

Prior to trial, the Public Defender filed a motion to suppress "any statement or admission" made by the accused to the police while in custody and before being brought before the District Court upon the complaint of the District Sheriff. The motion was carefully documented in support largely based upon the provisions of Section 464, Trust Territory Code, relating to the rights of an accused.

Testimony was heard and the questions extensively argued before denial of the motion, with the privilege, however, of its renewal at the close of the Government's case upon trial.

The two procedural questions raised on the motion became determinative elements in the trial because the evidence sought to be suppressed left no doubt as to the guilt of the accused.

The first question raised concerned the propriety of the admission of the following evidence : –

(a) A confession or incriminating statement (intended to be exculpatory as to one of the two counts of illegal entry) written by the accused at the request of the police after his arrest but before arraignment before the District Court, and

(b) The ship's log, containing statements sufficient to require conviction, which was seized by the District Constabulary without search warrant but pursuant to statutory authorization to inspect foreign vessels found in Trust Territory waters.

Objection to the admission of the information rested on several grounds:-

1. That the accused was not adequately warned of his rights. The accused, in his own testimony from the witness stand during the hearing on the motion to suppress did not sustain this objection, and the uncontradicted testimony of the District Sheriff and one of his officers established beyond a reasonable doubt that the accused had been apprised of his rights-all of them as required by Section 464, Trust Territory Code as amended by Public Law 4-5, effective August 21, 1968.

2. That the accused was unlawfully detained after arrest in that he was not released or charged within 24 hours as required by the amended Section 464, Trust Territory Code. This is a case of first impression as to this statutory obligation upon the police to release or charge within 24 hours. It requires serious consideration because the evidence in this case showed the arrest was made in the early afternoon of April 9, 1969, and a complaint was not issued and the accused brought before a District Court Judge until April 11, 1969. In the morning of April 10, 1969, the accused made his written incriminating admission to the police. The question is whether the unlawful detention (after 24 hours) vitiates the accused's statement to the police, thereby making it inadmissible.

It is concluded the statement was admissible and it with other substantial evidence demonstrated the guilt of the accused even before he subsequently admitted from the witness stand all essential elements of the crime necessary for his conviction.

There are several reasons for concluding the accused's statement, in spite of his detention beyond 24 hours, was admissible.

There is a conflict in procedure between the statutory provisions relating to boarding, inspecting and taking into custody foreign vessels found unlawfully in Trust Territory waters and the recent statutory provision that an arrested person must be released or "charged" within 24 hours of his arrest. The older statute places no time limit on detention or charging.

A charge, as an accusation, has been defined several ways by the courts according to statutory context or purpose. 6A Words and Phrases, Sec. 0267 et seq.

"Charge" means a formal complaint, information or indictment according to *People v. Lepori*, (Cal) 169 P. 692. A federal court in *Hughes v. Pfleeng*, 138 F. 980, said:-

"... the term 'charged with crime' is used in its broad sense and includes all persons accused of crime by legal proceedings. . . ."

There is another meaning given also. It is an accusation without formal written proceedings. In this sense, a charge is an accusation justifying an arrest without a warrant.

In *Haggard v. First National Bank*, 8 N.W.2d 5, the North Dakota court said :-

" 'Charge' within the statute authorizing arrest without warrant on a charge, made on reasonable cause, of commission of a felony, does not mean a formal written charge presented to proper authority,"

[1,2] The interpretation of any statute requires ascertainment of a meaning that will produce a reasonable result, when that is possible, rather than an absurd or strained result. Therefore, the meaning of "charge" in Section 464, Trust Territory Code, is interpreted in the sense that the accused is informed of the accusation to be made against him and not that a complaint or formal written information has been filed with the court.

If this were not the interpretation required by the statute we would nullify, for all practical purposes, Sections

877 and 878 of the Code as well as, perhaps, other criminal charges brought against an accused not found or arrested in a district center. We must recognize the realities of the Trust Territory.

The crew of an unlicensed (foreign) fishing vessel boarded or examined in the vicinity of Helen's Reef in the Palau District could not be formally charged, under most any circumstances sooner than two or three days after the arrest, assuming we define the term "arrest" as any detention or custody and the word "charge" as the filing of a formal written complaint with the court. This court will not abrogate the statutes because of a technicality of interpretation requiring a meaning of "charge" as a formal complaint before a court.

[3] We hold, therefore, that the statutory provision requiring that a person arrested shall be charged or released within 24 hours of his arrest means that he shall be informed of the nature of the formal criminal complaint to be brought against him "within a reasonable time", such time being as soon as circumstances permit making a formal written complaint and bringing the accused before a committing judge or official.

[4] The lawfulness, or unlawfulness, of the detention of an accused person beyond a 24-hour period without a formal complaint before a court may be one of the circumstances bearing on the admissibility of any incriminating statement the accused may have made during his detention.

[5,6] A statement made within 24 hours of the time of arrest may be considered voluntarily made, assuming the accused is fully apprised of his rights. A statement made after more than 24 hours' detention without charge is suspect, is prima facie obtained by coercion, subject, always, however, to the entitlement of the prosecutor to negative coercion by an appropriate showing.

We offer the gratuitous comment to the Congress of Micronesia that any 24-hour deadline such as is contained in Section 464 is not always practical and fails to recognize the physical conditions prevailing in the Trust Territory and an arrest in any outer island in any district necessarily requires travel for a matter of a day or more to reach the district center where the formal written charge may be issued and the accused may be brought before the court.

[7] The charge brought against the accused in this case--informing him he would be accused in a formal proceeding with violation of two sections of the Code-is held to be sufficient compliance with Section 464 under the circumstances even though it was not a literal compliance with the statute.

[8] Even if a detention beyond the 24-hour period from 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.

Admission of the ship's log, seized without warrant, when the police boarded the vessel raises the second evidentiary admission question. Corroboration of the admission to the police was found in the ship's log. This action was authorized by Trust Territory Code, Sections 877 and 878. Since no warrant for arrest nor search warrant had been issued, the question is whether or not portions of the cargo - a bag of tridacna clam muscles, two turtle shells, a fish, and two coconuts-were admissible together with the log.

[9] Section 457, Trust Territory Code, authorizes arrests without warrant by a policeman who has "reasonable grounds" to believe a criminal offense has been committed by the person arrested.

[10] Section 460, Trust Territory Code, also authorizes searches in connection with an arrest and seizure of the "fruits" and "evidences of the criminal offense".

[11] Clearly, the two Code provisions for general criminal procedure as well as the specific arrest and seizure provisions relating to vessels unlawfully entering Trust Territory waters amply justify the admission of the exhibits which by themselves, as distinguished from corroboration of the admission of the accused, were sufficient to warrant guilty verdicts for all three counts of the information.

Having substantiated the propriety of the criminal procedure supporting the conviction, next to be considered is the propriety of the order confiscating the cargo of the vessel, which had an estimated value of \$10,000.00, in addition to the imposition of substantial fines upon the defendant captain.

[12, 13] Normally, confiscation of contraband or the instruments employed in criminal activity is governed by appropriate statute. Confiscation of the means of committing a crime in the instance before the court constitutes a forfeiture. Provision for forfeiture of the vessel together with her apparel, tackle, furnishings and equipment is found in Section 883, Trust Territory Code.

[14, 15] Forfeiture is defined as "divesture of property without compensation" by means of an action against the property itself. Confiscation of cargo as an incident to criminal conviction is not within either the definition or statutory provision for forfeiture.

[16] A "penalty" as distinguished from forfeiture, is defined as "a punishment by way of a pecuniary exaction from the offender . . . imposed and enforced by the state for a crime against its laws." 36 Am. Jur. 2d, Forfeitures and Penalties, §§ 1 and 2.

[17] The only "pecuniary exaction" permitted by the Trust Territory Code for the offense here considered are fines not exceeding \$10,000.00 for each offense. Section 882, Trust Territory Code.

[18] There is nothing in the Code therefore authorizing either forfeiture or confiscation as a penalty of the cargo of a fishing vessel unlawfully operating in Trust Territory waters. However, because of the special nature of marine life (fish, clams, turtles) such statutory authority for confiscation is not necessary.

[19,20] Ownership of fish and marine animals is lodged in the people governing or controlling the waters in which the marine life is found. The coastal states of the United States control the marine resources found within the three-mile limit from their shores. A fisherman who lawfully catches fish acquires title when he reduces them to possession. One who unlawfully catches fish within three miles of the coast or island reef acquires no title.

One of the leading cases is from California, *People v. Monterey Fish Products Co.*, 234 P. 398, 38 A.L.R. 1186 at 1194, 1195.

"Title to, and the property in, the fish within the waters of the state, are vested in the state of California and held by it in trust for the people of the state Such fish can become the subject of private ownership only in such qualified way, to such limited extent, and subject to such conditions and limitations as the state through its legislature may see fit to provide and impose.

"It follows that if the fish were taken in violation of law, the fisherman who caught them acquired no title thereto, . . . and the title would still remain in the state."

[21] The defendant, convicted of unlawfully entering Trust Territory waters (Section 875, Trust Territory Code) and for the removal of marine resources (Section 881, Trust Territory Code) obtained his cargo in violation of law and therefore acquired no title to it. The

title remained in the government of the Trust Territory, held by it in trust for the people of Micronesia.

It is noted in connection with the Judgment Order and Sentence that the cargo unlawfully obtained resulted in "ravaging", in the words of the Fisheries Biologist, of the Helen's Reef area of Palau District. The tridacna clam muscles were taken from 1,000 to 2,000 clams measuring 36 inches to 48 inches in diameter. The shells, having a market value in Koror of fifty cents an inch, and the approximately fifty pounds of edible clam meat in each clam, in addition to the two to four pounds of muscle from each clam found on board the vessel, were all wasted in the sea around the reef. Further, the two turtle shells introduced in evidence taken from the cargo of 214 shells (having a wholesale value in Koror of not less than \$10.00 per shell) were illegal in size in that they were under 24 inches in length as prescribed in Section 781, Trust Territory Code. No charge was brought, however, for this offense.

The evidence adduced at trial demonstrated this vessel was outfitted in Okinawa for the specific unlawful venture in the area of Helen's Reef. The vessel sailed directly to those islands from Okinawa and captured and loaded all readily available turtles and clams. Having failed to fill the three holds with the Helen's Reef loot, it made reconnaissance operations in three other areas of Palau District until, finally, it was spotted and captured while working the reef near Ulong Island. The seriousness of the crime, its deliberate and calculated nature, warrants punishment commensurate with the offense.

It is, accordingly,

Ordered, adjudged, and decreed:-

1. That Yushin Kaneshima is found guilty of unlawful entry as charged in Count One of the information and he

is fined the sum of six thousand dollars (\$6,000.00) in punishment therefor.

2. That Yushin Kaneshima is found guilty of unlawful entry as charged in Count Two of the information and he is fined the sum of six thousand dollars (\$6,000.00) in punishment therefor.

3. That Yushin Kaneshima is found guilty of unlawful removal of marine resources as charged in Count Three of the information and he is fined the sum of six thousand dollars (\$6,000.00) in punishment therefor.

4. That, in addition to the foregoing fines, Yushin Kaneshima be and hereby is sentenced to two (2) years in prison, commencing this date, such imprisonment suspended, however, on condition that the said Yushin Kaneshima does not unlawfully enter the Trust Territory waters during said period.

5. It is the further judgment and order of the court that the cargo found on board the Kiyoshin Maru No. 23, a fishing vessel of Okinawan registry, comprising approximately two tons of tridacna clam muscles, 214 hawksbill and green sea turtle shells, and a quantity of fish and turtle meat shall be taken into custody by the Sheriff of the Palau District and by him, in consultation with the Trust Territory Fisheries Biologist, be disposed of to the best advantage of the Trust Territory Government.