

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

Confession - admissibility  
- voluntariness  
- inducement

BETWEEN: POLICE

Informant

- breach Article 6(3) Constitution

AND:

TUPUFIA VALAAU of  
Saasaai and Puapua

prima facie exclusionary rule

Defendant

Counsel: G Latu for the prosecution  
K M Sapolu for the defendant

Hearing Date: 1 July 1998

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ORAL DECISION OF MORAN J

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The defendant is charged with causing grievous bodily harm to a person on 27 May 1997.

When interviewed by Corporal Sefulu on 29 May 1998, the defendant admitted striking the complainant with a stone, that admission being contained in a written statement. Before that written statement was made he admitted to being responsible for causing the injury to the victim. The admissibility of the confession contained in the written statement and the confession that preceded it is challenged.

I have heard evidence this morning on the voir dire in order to resolve that challenge.

On the morning of 29 May 1998 Corporal Sefulu left a message with the defendant's wife saying that there was a matter that he wished to speak to him about. When he got home, the defendant was told of that message and so he immediately went to the Police Station. He knew when he went to the Police Station that the Police wanted to interview him about an allegation of assault.

He arrived at the Police Station at about 10 o'clock in the morning. Soon after he arrived, he was spoken to by Corporal Sefulu and an interview commenced. Some two and half hours later, the written statement was commenced. What occurred during the period of that two and a half hours is a matter of controversy. The Corporal contends that, during about two hours of that time, the defendant was simply allowed to chat to other people at the Police Station with whom he was acquainted.

I cannot accept that evidence, and I find that while the defendant may well have chatted to other policemen whom he knew, for the bulk of the time that he attended the Police Station before his written statement was taken, he was interviewed by the Corporal about the incident.

In the course of that interview, the Corporal told the defendant of the content of statements made by other witnesses which tended to show that, the defendant was

the last person who had an opportunity to speak to the complainant before he was found injured.

At that time, the Corporal did not have sufficient information upon which to charge the defendant, and he continued to press him about his involvement in the incident.

During the course of the interview, the Corporal said to the defendant something to the effect that God knows what happened, that God sees all, that the Corporal was not there, and that, the defendant should think about his response to the Corporal's questions.

The Corporal then left him for about five minutes, and then returned to speak to the defendant, and asked him whether he had made up his mind. At that the defendant began to cry. He professed respect for the Corporal and for his work, and confessed to being the one who assaulted the complainant and caused him injury. At that point of time, the Corporal had sufficient information to charge the defendant and he should immediately have cautioned him. However, he went on to ask a further question inquiring as to the motive or reason for the assault. The defendant responded and that he was unhappy with the complainant and that is why he assaulted him.

The Corporal then cautioned the defendant and told him that he was not obliged to make a statement, but, whatever he said would be recorded and given as

evidence in court. He then advised the defendant of his right to counsel and gave him a list of lawyers and telephone numbers.

The defendant denies that this occurred at this time, although when pressed under cross examination he resiled from that to some extent and said that he could not recall it.

I find that the advice was given and I accept that the defendant said that he did not want to see a lawyer, that he had told the truth that he was the person who assaulted the complainant.

He then agreed to make a written statement. The statement did not take very long to complete. The defendant says that the statement was compiled by the Corporal putting to him assertions of fact derived from the statements of other witnesses.

To a limited degree that may be the case, but there are no other witnesses who would have made the statements containing the information as to just how the assault occurred. At least I have heard no evidence of other eye witnesses, who might have supplied that information.

I therefore conclude that the inculpatory parts of the written statement came from information provided by the defendant.

The defendant has it that, during the course of the interview before he made any confession, he had an inducement held out to him, in the form of a promise that, if he admitted responsibility for the assault he would only be charged with assault rather than with a more serious crime, and that accordingly, the Magistrate could grant him bail.

I do not accept that evidence, and prefer the evidence of the Corporal to the effect that such a statement was made after the confession and that the statement was to the effect that he would only be charged with assault in the meantime, pending the receipt of a medical report on the condition of the victim.

It is also alleged by the defendant that the Corporal told him that he would be kept at the Police Station as long as he denied involvement in this crime, and that accordingly, he folded to that pressure and decided to take the easy way out by confessing.

I do not accept the defendant's evidence in that regard, and prefer the evidence of the Corporal, who denied that any such threat was made.

Neither can I accept the defendant's evidence that he was not advised of his right to consult a lawyer until after the written statement was made.

The written statement contains an acknowledgment that he had already been told of that right, and had said that he did not want to exercise it. It may be that the

translation is deficient in that regard, and, that the written statement records the fact that, at the time of the written statement, he is being advised of his right to consult a lawyer . Either way the defendant read and signed that portion of the statement acknowledging that advice, and I reject his evidence that he was not given that advice at all by the Corporal but only received it from a police officer Simi after the statement had been completed.

I view with some misgiving the fact that, over an extended period of more than an hour, the defendant was questioned by the Corporal without there being any record of the questions and answers then asked and given.

That interview extending over that period of time also raises the issue of whether there has been undue duress brought to bear.

In the final analysis, however, I am satisfied beyond reasonable doubt that the confession that the defendant made, was voluntary and that his will was not over borne by the conduct of the police officer.

Quite apart from the length of time that he was questioned over, I accept that there were other policemen at the station with whom he was friendly and with whom he was associated through referecing, and that he was not, therefore, in an entirely hostile environment.

I have rejected the allegation that any inducement was held out for him to make a confession.

Sitting back and looking at the whole process in the round, I do not consider that the defendant was so unfairly treated that I should exercise my discretion against admission of the statement.

The statement was voluntary, no inducement was offered, and the admission of the statement would not be unfair. I therefore rule that the evidence of the confession made before the written statement was taken, and, the written statement itself is admissible.

One point raised by counsel that I omitted to address was the issue of whether or not advice of the right to legal advice was given in a timely fashion.

Article 6(3) of the Constitution provides that a person who is arrested shall be informed promptly of the grounds of his arrest and the charge against him, and, shall be allowed to consult a legal practitioner of his own choice without delay.

I am indebted to counsel for bringing to my attention a decision of the learned Chief Justice delivered in March 1996.

In that decision his Honour adopted the New Zealand jurisprudence as to similar provisions in the New Zealand Bill of Rights Act. There, his Honour respectfully adopted the meaning of the word "arrest" as given by President Cooke (as he then was).

“Where a police officer makes it clear to a suspect that he is not free to go and is to be interrogated by the officer on suspicion of a crime, then that person is arrested”.

In the context of the present charge, I find that the defendant was “arrested” at the time that he sat down at the table to be interviewed by the Corporal. I find that the circumstances were such that he was not free to go notwithstanding the Corporal’s hypothetical proposition that had the defendant wished to depart he would have been allowed to. It follows that the defendant should have been advised to his right to consult a lawyer of his choice at the start of the interview.

The protection of the Constitution afforded to people who are being interrogated has to be given life. That protection would be a dead letter if it were not to be afforded until the stage when a suspect is formally arrested. By that stage he will have made statements to the police adverse to his interest and any protection given by Article 6(3) will be illusory.

There having been a breach of the defendant’s constitutional right to timely advice of his right to consult a lawyer, the question arises whether, on that score alone, I should exclude his confessional statements.

In the decision of the learned Chief Justice delivered on 14 March 1996, His Honour there adopted the *prima facie* exclusory rule expounded by the New Zealand Court of Appeal in cases up to that time.



The Court of Appeal in New Zealand had since expressed some reservation about that prima facie exclusory rule and has indicated a willingness to revisit that question on some appropriate case in the future.

I would therefore be reluctant to adopt the prima facie exclusory rule without qualification in the Samoan jurisdiction. Even if it were to be adopted as the starting point, I think that there is good reason for departure from that rule in the present case.

The defendant, having made his confession, was immediately given his right to speak to a lawyer and he quickly and emphatically rejected it. He had just been given time to consult his conscience and decide whether or not he was going to tell the truth as he knew it. Having been given that time he then tearfully confessed. When given his right to consult a lawyer he said that he did not want to see a lawyer, he had told the truth that he was the person who assaulted the victim. In short he had decided to answer to his conscience and confess his guilt, and the lack of timely advice of his right to consult a lawyer was therefore inconsequential. ✕

I confirm my ruling that his confessional statements are admissible.

*Moran J*

Moran J

*Folekutu,*  
 I am not confident, upon reflection, that this would survive an appeal. Had the advice been given at the start of the interview the defendant might have phoned a lawyer, and the result might well have been that the interview proceeded as it did.  
 PL:1.