

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,)
)
)
 Plaintiff,)
 vs.)
)
 SCOTT SÍPENUK,)
)
)
 Defendant.)
)
)

CRIMINAL CASE NO. 11-2010

MEMORANDUM AND ORDER OF DISMISSAL

Camillo Noket
Chief Justice

Trial: May 20, 2010
Decided: May 20, 2010
Order Entered: June 1, 2010

APPEARANCES:

For the Plaintiff: Charleston Bravo
Assistant Attorney General
Office of the Chuuk Attorney General
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For the Defendant: Fredrick A. Hartmann
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HEADNOTES

Criminal Law and Procedure - Arrest and Custody

It is unlawful to fail to either release or charge an arrested person with a criminal offense within a reasonable time, which under no circumstances must exceed twenty-four hours. An unlawful detainment does not in itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation may be used against the accused, and any person on the detainee's behalf may move the court for the detainee's immediate release upon expiration of twenty-four hours from the arrest. Chuuk v. Sipenuk, 17 FSM Intrm. 135, 136 (Chk. S. Ct. Tr. 2010).

Criminal Law and Procedure - Escape

One of the elements of escape is that the person charged is under lawful custody. Chuuk v. Sipenuk, 17 FSM Intrm. 135, 137 (Chk. S. Ct. Tr. 2010).

Criminal Law and Procedure - Escape

When an accused's custody had exceeded twenty-four hours at the time he committed the

alleged escape and therefore the custody was not lawful and when the evidence to support the escape charge was obtained as a direct result of that unlawful detainment and was therefore inadmissible, escape could not be proven. Chuuk v. Sipenuk, 17 FSM Intrm. 135, 137 (Chk. S. Ct. Tr. 2010).

Criminal Law and Procedure – Arrest and Custody; Criminal Law and Procedure – Escape

Resort to self help by a detainee is inherently dangerous to the prisoner, the police, and to the public, as an attempted escape may result in circumstances where there is resort to force either by or against the detainee. Therefore, in cases of unlawful detainment, it is much preferred as a matter of public policy for counsel or other person to move the court for a detainee's immediate release. Chuuk v. Sipenuk, 17 FSM Intrm. 135, 137 (Chk. S. Ct. Tr. 2010).

Criminal Law and Procedure – Escape

A finding that the arrest was without probable cause may also support dismissal of an escape charge since an arrest without probable cause does not constitute an authorized arrest which can serve as a predicate for an escape charge where the escape was without force. Chuuk v. Sipenuk, 17 FSM Intrm. 135, 137 (Chk. S. Ct. Tr. 2010).

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COURT'S OPINION

CAMILLO NOKET, Chief Justice:

I. INTRODUCTION

At trial on May 20, 2010, the court ordered dismissal of the information for failure to prove the charge of escape. This memorandum memorializes that ruling.

II. BACKGROUND

In its information, the Government alleged that in late December 2009 or early January 2010, defendant Scott Sipenuk was arrested for drinking without a permit and that during his custody he pretended to use the rest room but instead left police custody, thereby committing the offense of escape pursuant to Chuuk State Law No. 6-66, § 912.

At trial, the court found that at the time defendant Sipenuk left police custody he had been detained for longer than twenty-four hours without being charged, without being brought before the court for a preliminary hearing, and without being granted access to counsel. There were also issues raised regarding whether the arrest was supported by probable cause. The court's dismissal was based on the Government's inability to prove escape, because the alleged escape occurred when the defendant was unlawfully detained.

III. ANALYSIS

It is unlawful to fail to either release or charge an arrested person with a criminal offense within a reasonable time, which under no circumstances shall exceed twenty-four hours. 12 TTC 68 (adopted as Chuuk state law through the transition provision, Chk. Const. art. XV, § 9). An unlawful detainment does not in itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation may be used against the accused. Otherwise, any person on the detainee's behalf may move the court for the detainee's immediate release upon expiration of twenty-four hours from the arrest. 12 TTC 70.

One of the elements of escape is that the person charged is under lawful custody. Chk. S.L. No. 666, §912. Sipenuk's custody had exceeded twenty-four hours at the time he committed the alleged escape and therefore was not lawful. 12 TTC 68. Furthermore, the evidence to support the charge was obtained as a direct result of that unlawful detainment, and was therefore inadmissible. 12 TTC 70. Therefore, escape could not be proven.

The court notes that resort to self-help by a detainee is inherently dangerous to the prisoner, the police, and to the public, as an attempted escape may result in circumstances where there is resort to force either by or against the detainee. Therefore, in cases of unlawful detainment, it is much preferred as a matter of public policy for counsel or other person to move the court for a detainee's immediate release. 12 TTC 70. The court cannot, however, find fault with the defendant for resorting to self-help and safely leaving police custody when the police had no legal basis for holding him.

The court also notes that a finding that the arrest was without probable cause may also have supported dismissal. See 30A C.J.S. *Escape* §9, at 413 (1992) (an arrest without probable cause does not constitute an authorized arrest which can serve as a predicate for an escape charge where the escape was without force).

IV. CONCLUSION

Therefore, the case was dismissed.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,)	CRIMINAL CASE NO. 012-2010
)	
Plaintiff,)	
)	
vs.)	
)	
ROCKY INEK,)	
)	
Defendant.)	
_____)	

ORDER DENYING STAY

Camillo Noket
Chief Justice

Hearing: June 1, 2010
Decided: June 4, 2010

APPEARANCES:

For the Plaintiff: Charleston Bravo, Assistant Attorney General
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