

IN THE MATTER OF ROMAN ICHIRO, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Civil Action No. 423
Trial Division of the High Court
Truk District
February 8, 1968

Appeal from judgment of District Court finding appellant was a delinquent child. The Trial Division of the High Court, Temporary Judge Robert Clifton, found that as a result of prolonged gasoline sniffing appellant was endangering his own health and was a delinquent child under section 437(d) of the Trust Territory Code.

Affirmed.

1. Public Nuisance-Generally

Inhaling gasoline vapors by a child does not constitute committing a nuisance under Section 408 of the Trust Territory Code.

2. Infants-Delinquent Child

No medical testimony was necessary to support finding that because of gasoline sniffing child in question was a delinquent child under Section 437 of the Trust Territory Code, where sheriff observed child inhaling gasoline fumes for one-half hour and the child thereupon stiffened and vomited. (T.T.C., Sec. 437(d))

3. Courts-Judicial Notice

It is a well-known fact that gasoline sniffing causes a form of intoxication and that it can also seriously and permanently injure the respiratory system and, also, do brain damage.

4. Infants-Delinquent Child

Assuming that the child in question was held for too long a period before being released by the sheriff, that would not constitute a defense in an action to determine whether the child was a delinquent child under Section 437 of the Trust Territory Code. (T.T.C., Sec. 437)

Counsel for Appellant:

ISTARO RABAIRECK

CLIFTON, *Temporary Judge*

This is an appeal from a judgment of the District Court of the Truk District, Judge Ichiro Moses, presiding. The

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Judgment found that the appellant was a delinquent child, ~~w~~within the meaning of Section 437 of the Code of the Trust Territory of the Pacific Islands, and put the above-named child under the custody of his parents for a period of thirty days.

The facts in the case are simple. Sheriff Keigo testified that on December 27, 1966, in the afternoon, the child was on a Trust Territory Government boat (LCM) at the dock located in the boat pool area of Nepukes Village on Moen Island. Appellant was sitting on the boat holding a can containing some gasoline, and was observed to inhale the gasoline fumes for one-half hour. As a result, the child stiffened and vomited, so he was picked up by the Sheriff and taken to the Sheriff's car and then to the Constabulary for detention. Within two days the child was released, but a complaint was filed under Section 437 of the Trust Territory Code alleging that the child was a delinquent child and stating, in substance, that he did unlawfully smell a gas liquid knowing that the act endangered his body and that it was an unlawful act.

The decision of the District Court must be sustained. Section 437 of the Trust Territory Code reads as follows:-

"Section 437. 'Delinquent Child' defined. As used in this chapter, 'delinquent child' includes any child:

(a) Who violates any law of the Trust Territory, or District thereof, except that a child who violates any traffic law or regulation shall be designated as a 'juvenile traffic offender' and shall not be designated as a delinquent unless it be so ordered by the court after hearing the evidence; or

(b) Who does not subject himself to the reasonable control of his parents, teachers, guardian or custodian, by reason of being wayward or habitually disobedient; or

(c) Who is a habitual truant from home or school; or

(d) Who so deports himself as to injure or endanger the morals or health of himself or others."

Counsel for the appellant, in a well-drawn brief, contends that Section 408 of the Trust Territory Code (which is numbered erroneously in his brief as Section 437) was not violated by the child and hence could not be a violation of a law of the Trust Territory or a district thereof so as to bring the proceeding under subdivision (a) of Section 437. The court agrees with this contention. Section 408 provides as follows: -

"Section 408. Maintaining a nuisance. Whosoever shall unlawfully maintain or allow to be maintained a condition of things which is prejudicial to the health, comfort, safety, property, sense of decency, or morals of the people of the Trust Territory by an illegal act, or by neglect of legal duty, shall be guilty of maintaining a nuisance, and upon conviction thereof shall be imprisoned for a period of not more than six months, or shall be fined not more than one hundred dollars (\$100), or both."

[1-3] Under the facts stated above it cannot be held that the defendant had committed a nuisance. However, the facts stated above clearly support a finding by the District Court that the child came within the provisions of subdivision (d) of Section 437 which defines a delinquent child as "one who so deports himself as to injure or *endanger* the morals or *health* of himself or others." As to this subdivision, appellant's counsel maintains that there was no medical testimony to support the judgment. No medical testimony was necessary in this case. The Sheriff observed the child inhaling gasoline fumes for one-half hour and the child thereupon stiffened and vomited. From this, any person could reasonably conclude that the stiffening and vomiting was caused by the inhalation of the gasoline fumes. In addition to this, it is a well-known fact, of which the Court can take judicial notice, that "gasoline sniffing", which occurs with much too great a frequency among children, causes a form of intoxication and that it can also seriously and permanently injure the

respiratory system. and, also, do brain damage. It could therefore be held by a court that the mere purposeful inhalation of gasoline fumes by a child for a considerable period could endanger the health of the child, either because of the possibility of injury to the child while intoxicated or the possibility of direct damage to the child's body by the inhalation itself.

In addition to the fact of inhalation in this case, the evidence did show the reaction of the child, that is, the stiffening and vomiting of the child. The Court is of the opinion that the Sheriff would have been justified in taking the child into custody and bringing these proceedings if he had merely observed the child inhaling the gasoline fumes for a considerable period of time because the child could endanger his health by sniffing the gasoline even though no immediately observable effects could be noticed.

[4] Appellant's counsel also calls attention to the length of time that the child was held before he was released. Assuming, but not deciding, that the child was held for too long a period before being released, this would not constitute a defense in the proceeding. While in some cases it has been held that a confession could not be received in evidence because of the length of time that a person was held in custody, plus many other additional circumstances which might prevent the confession from being received in evidence, such circumstances have never been held to prevent the prosecution of the proceeding.

The judgment of the District Court is amply supported by the evidence in this case and the judgment is affirmed.