

NOT FOR PUBLICATION

NO. 25989

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant, v.
ALLEN DALE TAVARES, Defendant-Appellee

NORMA T. YARA
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STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-0062)

MEMORANDUM OPINION

(By: Burns, C.J., Foley, and Nakamura, JJ.)

Plaintiff-Appellant State of Hawai'i (the State) appeals from the "Findings of Fact, Conclusions of Law, and Order Granting Motion to Suppress Evidence and Statements" (Suppression Order) filed on July 3, 2003, in the Circuit Court of the First Circuit (circuit court).¹ Defendant-Appellee Allen Dale Tavares (Tavares) was charged by complaint with one count of Promoting a Dangerous Drug in the Third Degree and one count of Prohibited Acts Related to Drug Paraphernalia. The circuit court suppressed the evidence on which these charges were based, namely, 1) a glass pipe with residue, which appeared to be methamphetamine, that a police officer saw on the ground next to where Tavares was seated and 2) a statement Tavares made relating to the pipe.

¹ The Honorable Reynaldo Graulty presided.

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On appeal, the State argues that the circuit court erred in: 1) ruling that the evidence seized from Tavares and the statement he made were the fruits of an illegal detention; and 2) ruling that Tavares's statement was the product of a custodial interrogation. We agree with the State and reverse the Suppression Order.

BACKGROUND

A. Evidence Presented at the Suppression Hearing

On October 1, 2002, shortly after midnight, Honolulu Police Department (HPD) Officer Damien Solon (Officer Solon) was on patrol in a marked blue and white police car in the Kapolei/Ewa area. While driving on Fort Weaver Road, Officer Solon noticed a red Nissan Sentra in front of him. Officer Solon's attention was drawn to the Sentra because the back-seat passenger, later identified as Tavares, kept looking back at Officer Solon. Officer Solon described Tavares as having his arm on the back rest and repeatedly looking forward and then looking back at Officer Solon. Officer Solon pulled alongside the Sentra and noticed that Tavares kept looking at the officer as did the driver, who appeared to be nervous.

After letting the Sentra proceed a good distance ahead, Officer Solon moved back into the Sentra's lane and followed. At the next intersection, the Sentra made an abrupt turn into the left-turn lane and stopped at a traffic light. Officer Solon

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called the police dispatcher and asked her to run the Sentra's rear license plate number. The dispatcher reported that the car had not been reported stolen but that the car's safety inspection and registration had expired in 2000. Officer Solon saw that the safety inspection sticker on the Sentra showed a 2003 expiration date, and he did not see a registration sticker. Officer Solon decided to pull the Sentra over to investigate the discrepancy between the expiration date of the safety inspection reported by the dispatcher and that reflected on the car's safety inspection sticker.

Officer Solon activated the blue lights on his police car. The Sentra, however, did not pull over but increased its speed. During Officer Solon's pursuit, the Sentra's lights were turned off. Officer Solon followed the Sentra as it proceeded into a residential subdivision and down a dead end street where it stopped. Officer Solon saw three doors open and a male driver, a female front-seat passenger, and Tavares emerge from the car. The driver ran away. Tavares raised his hands and approached Officer Solon, explaining that he did not know why the driver refused to stop. The female passenger did the same thing.

Officer Solon told Tavares and the female passenger to sit on the curb, which was separated from the sidewalk by a strip of gravel. Tavares complied and sat down. Officer Solon asked Tavares to identify the driver and Tavares supplied the driver's

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first name. Officer Solon then asked Tavares for personal information so the officer would know "who I was talking to." When Tavares gave his name, Officer Solon remembered Tavares from a prior incident in which Officer Solon had stopped and questioned Tavares as a possible suspect, apparently in a car theft case.² While obtaining personal information from Tavares, Officer Solon noticed a glass pipe, which appeared to contain methamphetamine residue, on the ground about six inches from where Tavares was sitting. The glass pipe had not been there before Tavares sat down.

After seeing the pipe, Officer Solon continued to question Tavares to obtain personal information, and while doing so, Officer Solon saw Tavares grab a handful of gravel and attempt to cover the pipe. Officer Solon told Tavares to stop and to leave the pipe alone. Tavares then grabbed the pipe, showed it to Officer Solon, and asked if Officer Solon "could hide it before the other officers come because [Tavares was] gonna get locked up for it." Officer Solon testified that Tavares's statement was not in response to any questioning by the

² During the cross-examination of Honolulu Police Department (HPD) Officer Damien Solon (Officer Solon) by counsel for Defendant-Appellee Allen Dale Tavares (Tavares), Officer Solon stated that he recognized Tavares after Tavares gave his name. Tavares's counsel asked Officer Solon whether Tavares had been a suspect in a car theft case in 1998. When Officer Solon indicated he did not recall the details of that case, Tavares's counsel provided Officer Solon with a copy of his police report to refresh his recollection. After reviewing the report, Officer Solon acknowledged that in 1998, he had stopped and questioned Tavares as a possible suspect but that Tavares was never charged with "that offense." In his testimony, Officer Solon did not explicitly acknowledge or state that the 1998 case was a car theft case.

officer. There is no evidence that Tavares was advised of his Miranda rights prior to his statement.³ Officer Solon recovered the glass pipe as evidence and placed Tavares under arrest.

After arresting Tavares, Officer Solon checked the vehicle identification number (VIN) on the Sentra to make sure that the license plates on the car were the plates actually issued to the vehicle. The previous check by the HPD dispatcher, which was based on the rear license plate number Officer Solon had called in, did not indicate that the car was stolen. Officer Solon, however, remained suspicious about the car's status because of the discrepancy regarding the expiration date for the safety inspection and the driver's conduct in refusing to pull over and then fleeing on foot. After obtaining the Sentra's VIN number, Officer Solon verified that the VIN number matched the car and the license plates on the car.

B. The Circuit Court's Ruling

The circuit court orally granted Tavares's suppression motion and later filed a written Suppression Order which provided, in relevant part, as follows:

³ Neither party asked Officer Solon at the suppression hearing whether Officer Solon had advised Tavares of his Miranda rights. HPD Officer Corine Rivera (Officer Rivera), who arrived after Tavares had been arrested, testified that she had not been informed by anyone that Tavares had been given any Miranda warnings. Officer Rivera testified that she asked Tavares and the female passenger to prepare written statements. Tavares's statement concerned only the identity of the driver and Tavares's efforts to get the driver to stop. Officer Rivera stated that she did not give Tavares any Miranda warnings.

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FINDINGS OF FACT

1. Honolulu Police Officer Damien Solon observed a vehicle whose rear passenger and driver appeared to be looking at him in his marked police vehicle on Fort Weaver Rd on October 1, 2002.
2. Defendant was the rear seat passenger in a vehicle driven by a third party.
3. Officer Solon radioed in to check the license plates of the vehicle and learned it had not been reported stolen.
4. He was also advised by dispatch that police records indicated the vehicle's safety check and registration had expired in 2000.
5. Officer Solon saw a safety sticker on the vehicle which purported to be valid until August of 2003.
6. He attempted to stop the vehicle to investigate the discrepancy, at which time the vehicle refused to stop and continued driving with Officer Solon in pursuit until it stopped near the intersection of Kaneana St. and Poea St.
7. Defendant and the other passenger, a female, exited the vehicle and awaited the arrival of Officer Solon, but the driver fled.
8. When Solon arrived, Defendant was ordered to sit where he stood, and was not free to leave.
9. Defendant was asked about the driver of the vehicle and provided a name to the officer.
10. Officer Solon continued to detain Defendant to obtain personal information from him as well as to inquire further about the driver.
11. Defendant was not given Miranda warnings.
12. While questioning Defendant, Officer Solon noticed a glass pipe on the ground beside Defendant.
13. As the questioning continued, Officer Solon saw Defendant attempt to cover the pipe with the gravel on the ground where he was seated.
14. Solon then ordered Defendant to stop covering the pipe, at which time Defendant asked Officer Solon if he would hide the pipe before the other officers came.
15. Officer Solon then seized the pipe.

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CONCLUSIONS OF LAW

1. Under State v. Kauhi, 86 Haw. [sic] 195, 948 P.2d 1036 (1997), the Defendant in the instant case had been "seized," such that a reasonable person in that circumstance would not have believed he was free to leave.
2. The words spoken by Defendant were the result of interrogation while he was in custody, under State v. Ketchum, 97 Haw. [sic] 201, 34 P.3d 1006 (2001).
3. The continued questioning required the giving of Miranda warnings to the Defendant (State v. Ah Loo, 94 Haw. [sic] 201, 9 P.3d 1006 (2000)), but none were given.
4. The evidence seized from the Defendant and the statements made by the Defendant were each "fruits of the poisonous tree" of the illegal detention and are thus suppressed.

ORDER

IT IS HEREBY ORDERED that the evidence seized from the Defendant and the statements made by him are suppressed and precluded from use at trial.

DISCUSSION

A. Tavares Was Not Unlawfully Detained.

The State argues that Officer Solon's seizure of Tavares was lawful because the officer had reasonable suspicion to stop the Sentra and briefly detain Tavares for questioning. We agree.

It is well established that a police officer in appropriate circumstances may detain a person for investigation without probable cause and without subjecting him to an arrest. State v. Barnes, 58 Haw. 333, 337-38, 568 P.2d 1207, 1211 (1977).

To justify an investigative stop, short of an arrest based on probable cause, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The ultimate test in these situations must be whether from these

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facts, measured by an objective standard, a man of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate.

Id. at 338, 568 P.2d at 1211 (internal quotation marks and citation omitted).

A brief seizure by the police to question a person is permissible if based on reasonable suspicion that criminal activity may be afoot. United States v. Arvizu, 534 U.S. 266, 273 (2002); State v. Melear, 63 Haw. 488, 493, 630 P.2d 619, 624 (1981). Although there is no precise bright line distinguishing an investigative detention from an arrest, State v. Ketchum, 97 Hawai'i 107, 125, 34 P.3d 1006, 1024 (2001),

[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at that time.

Melear, 63 Haw. at 493, 630 P.2d at 624 (quoting Adams v. Williams, 407 U.S. 143, 146 (1972)).

Generally, a person detained pursuant to a traffic stop is subjected to an investigative detention rather than an arrest. See Berkemer v. McCarty, 468 U.S. 420, 439-40 (1984) (holding that persons temporarily detained pursuant to ordinary traffic stops are not in custody for the purposes of Miranda); State v. Ah Loo, 94 Hawai'i 207, 211, 10 P.3d 728, 731 (2000). A person lawfully detained pursuant to an investigative stop is not subjected to an arrest "when the officer poses noncoercive questions to the detained person that are designed to confirm or

dispel the officer's reasonable suspicion." See Ah Loo, 94 Hawai'i at 211, 10 P.3d at 731.

Officer Solon had reasonable suspicion to effect a stop of the Sentra. The officer had reason to suspect that criminal activity was afoot based on Tavares's conduct in repeatedly looking back at the officer's car and the discrepancy regarding the expiration date of the car's safety inspection. Officer Solon's objective basis for suspecting criminal activity intensified when, in response to the officer's signal to pull over, the driver of the Sentra sped away, turned off the car's lights, and fled on foot after stopping at a dead end street.

Tavares contends that while Officer Solon may have had reasonable suspicion to detain the driver, the officer did not have reasonable suspicion to detain Tavares. We disagree. Tavares's suspicious conduct in repeatedly looking back at the officer and Tavares's presence in the car linked him to the driver's conduct. The driver of the Sentra refused to comply with the officer's signal to pull over and then fled on foot when the car reached the dead end. We do not believe Officer Solon was powerless to detain Tavares for questioning in order to sort out the suspicious events that had just unfolded. Officer Solon had reasonable suspicion to believe that Tavares and the driver may have been involved in criminal activity and acted reasonably in detaining Tavares for questioning.

Nothing about Officer Solon's questioning of Tavares prior to the officer's observation of the glass pipe on the ground converted Tavares's lawful detention into an arrest. Up to that point, Officer Solon's questioning had been brief, had not been accusatory or coercive, had focused on identifying the driver and Tavares, and had been designed to confirm or dispel the officer's reasonable suspicion. Officer Solon saw the glass pipe in plain view on the ground and properly seized it. Once Officer Solon saw the glass pipe, he had probable cause to arrest Tavares. We conclude that Tavares was not subjected to an unlawful detention. Accordingly, the circuit court erred in suppressing the glass pipe and Tavares's statement relating to the pipe as the fruits of an illegal detention.

B. Tavares's Incriminating Statement Was Not the Product of a Custodial Interrogation.

The circuit court also suppressed Tavares's incriminating statement relating to the glass pipe on the basis that the statement was the product of a custodial interrogation conducted without prior Miranda warnings. The circuit court erred in reaching this conclusion.

Miranda warnings are required only when the police subject a person to a custodial interrogation. Ketchum, 97 Hawai'i at 117, 34 P.3d at 1016. A defendant seeking to suppress his or her statement must establish that it was the result of

"(1) 'interrogation' that occurred while he or she was (2) 'in custody.'" Id. at 118, 34 P.3d at 1017.

We need not decide whether Tavares was in custody when he made the statement asking if Officer Solon "could hide [the glass pipe] before the other officers come because [Tavares was] gonna get locked up for it." This is because we conclude that Tavares's statement was not the product of "interrogation." For purposes of Miranda, interrogation is defined as "express questioning or its functional equivalent." Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980); Ah Loo, 94 Hawai'i at 210, 10 P.3d at 731. The test is whether the police officer should have known that his words or actions were reasonably likely to elicit an incriminating response from the person being questioned. State v. Ikaika, 67 Haw. 563, 567, 698 P.2d 281, 284 (1985).

In the midst of obtaining personal identifying information from Tavares⁴ and in response to observing Tavares covering the pipe on the ground with gravel, Officer Solon instructed Tavares to stop and to leave the pipe alone. We conclude that Officer Solon's instruction to Tavares did not constitute interrogation because it was not reasonably likely to elicit an incriminating response. Tavares's incriminating

⁴ We note that ordinarily, routine questions about personal identifying information, such as name, address, height, weight, eye color, date of birth, and social security number, are not considered interrogation because they are not reasonably likely to elicit an incriminating response. State v. Ketchum, 97 Hawai'i 107, 119-20, 34 P.3d 1006, 1018-19 (2001).

statement was a volunteered, spontaneous statement that was not the product of any questioning by Officer Solon. See Ikaika, 67 Haw. at 566-68, 698 P.2d at 283-85; State v. Paahana, 66 Haw. 499, 503, 666 P.2d 592, 596 (1983). Because Tavares's statement was not the result of interrogation by Officer Solon, no Miranda warnings were required. The circuit court erred in suppressing Tavares's statement relating to the glass pipe based on the absence of Miranda warnings.⁵

CONCLUSION

We conclude that the glass pipe and Tavares's statement relating to the pipe were lawfully obtained by the police. We reverse the "Findings of Fact, Conclusions of Law, and Order Granting Motion to Suppress Evidence and Statements" that was filed on July 3, 2003, in the Circuit Court of the First Circuit,

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⁵ During the suppression hearing, there was a brief reference made to a post-arrest written statement prepared by Tavares concerning the identity of the driver and Tavares's efforts to get the driver to stop. There is no indication that the prosecution intended to introduce this post-arrest statement at trial, and the trial court's suppression ruling does not appear to have addressed it. Our opinion expresses no view on whether Tavares's post-arrest written statement is admissible.

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and remand the case for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, February 7, 2006.

On the briefs:

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Taryn R. Tomasa,
Deputy Public Defender,
for Defendant-Appellee.


Chief Judge


Associate Judge


Associate Judge