

NO. 26946

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

STATE OF HAWAI'I, Plaintiff-Appellee,

v.

CONRAD K. THOMAS, also known as
Conrad Kabrina Thomas, Defendant-Appellant,

and

RODNEY C.S. LEONG, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 03-1-2037)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Conrad K. Thomas (Thomas) appeals from the judgment entered in the Circuit Court of the First Circuit¹ on November 3, 2004.

On September 18, 2003, Thomas was charged by Complaint with the following:

COUNT III: On or about the 9th day of September, 2003, in the City and County of Honolulu, State of Hawaii, [Thomas], also known as Conrad Kabrina Thomas, did knowingly possess the dangerous drug methamphetamine, thereby committing the offense of Promoting a Dangerous Drug in the Third Degree, in violation of Section 712-1243 of the Hawaii Revised Statutes.

COUNT IV: . . . [Thomas] did knowingly possess the dangerous drug heroin, thereby committing the offense of Promoting a Dangerous Drug in the Third Degree, in violation of Section 712-1243 of the Hawaii Revised Statutes.

¹ Judge Dan T. Kochi heard and denied the motion to suppress on November 18, 2003. Judge Kochi retired on December 31, 2003. Acting for Judge Kochi, Judge Richard K. Perkins signed the findings of fact, conclusions of law, and order denying the motion to suppress. Judge Michael D. Wilson entered the judgment.

K. HAMAKAOD
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 SEP - 1 AM 9:33

FILED

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

COUNT V: . . . [Thomas] did use or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of Chapter 329 of the Hawaii Revised Statutes, thereby committing the offense of Unlawful Use of Drug Paraphernalia, in violation of Section 329-43.5(a) of the Hawaii Revised Statutes.

COUNT VI: . . . [Thomas] did knowingly possess marijuana, thereby committing the offense of Promoting a Detrimental Drug in the Third Degree, in violation of Section 712-1249 of the Hawaii Revised Statutes.

On October 8, 2003, Thomas filed a Motion to Suppress Items of Evidence to preclude "from use at trial, evidence obtained from warrantless searches and seizures of the defendant's property, which violated his rights under Article I, Section 7, of the Hawai'i State Constitution and the Fourth and Fourteenth Amendments of the United States Constitution." Thomas sought to suppress evidence of Counts III, IV and V, specifically, "[a] glass pipe and cocaine residue in that pipe" and "2 bags containing methamphetamine and heroin[.]"

The July 9, 2004 "Findings of Fact, Conclusions of Law, and Order Denying Defendant Conrad Thomas' Motion to Suppress Items of Evidence and Defendant Rodney Leong's Joinder in Same" (FsOF, CsOL, and Order Denying Motion to Suppress) state in part:

FINDINGS OF FACT

1. On September 9, 2003, Officer Rick Barnett observed a truck stopped half way over a cross walk at the intersection of North Kukui Street and River Street in violation o[f] R.O.H. § 15-14.1(a)(5).
2. As Officer Barnett approached the vehicle, he noted Defendant Conrad Thomas in the passenger side exit the vehicle. He also noted Defendant Rodney Leong, with his left foot on the dashboard in the driver's seat. The engine was running, but the vehicle had been and continued to be at a complete stop.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

3. Officer Barnett stopped in front of the truck and approached the vehicle to detain the driver in order to check his Driver's License, registration, and insurance. Officer Barnett approached the driver's side door of [the] truck from the front and asked Defendant Leong for the paperwork.
4. As Officer Barnett waited for the paperwork, he noted a lighter and a green straw on the passenger seat, the seat that the Defendant Thomas had just vacated. This observation was made from the officer's vantage point by the driver's side door of the truck. . . .
5. The green straw was observed to be cut on both ends to the length of three (3) inches. Straws cut to that size are used to contain drugs. At the time of his observation, Officer Barnett knew of this use.
6. Upon this observation, Officer Barnett went to the passenger side of the truck and seized the green straw. Through the open end he saw a clear plastic bag with a green leafy material. Through his training and experience, Officer Barnett identified this material as marijuana.
. . . .
10. Officer [Troy] Kodota detained Defendant Thomas approximately one hundred (100) feet from the truck and brought him back to the area of the truck. . . .
. . . .
13. Based upon all of the above facts, Officer Barnett arrested Defendant Thomas for Promoting Detrimental Drugs in the Third Degree (marijuana possession)
. . . .
15. During his pat down search, Officer [High Shin] Lin felt a cylindrical object with a round end in Defendant Thomas' pocket. Through his training and experience, Officer Lin believed this to be a glass "ice" pipe used to ingest "ice", a form of methamphetamine.
16. Officer Lin withdrew the object from Defendant Thomas' pocket and observed it to be a glass pipe containing residue that he determined to be methamphet[a]mine. Officer Lin also recovered two lighters.
17. Defendant Thomas was then arrested for Promoting Dangerous Drug in the Third Degree and Unlawful Use of Drug Paraphernalia.
. . . .
21. During the pre-incarceration search, Officer [Bryan] Ohta felt two objects that appeared to be unknown items contained in bags in Defendant Thomas' pocket.
22. When Officer Ohta took these items from Defendant Thomas' pocket he observed them to be two (2) clear plastic bags. One of the bags contained crystalline substance that Officer Ohta . . . identified as methamphetamine.

23. The other plastic bag contained a brown substance "like a crushed Milk-Dud" Officer Barnett . . . identified the substance as black tar heroine.

.

CONCLUSIONS OF LAW

.

2. At the time Officer [Barnett] observed the cut green straw, it was in plain view.
-
4. Prior to the observation of the marijuana, Defendant Thomas was free to leave; however, after observing the presence of marijuana within the straw on the passenger seat, it was reasonable to assume that it belonged to Thomas or that Thomas possessed it prior to exiting the vehicle.
5. Officer Barnett had probable cause to detain and arrest Defendant Thomas for possession of the marijuana.

The judgment filed on November 3, 2004, found Thomas guilty on Counts III, IV, V, and VI and sentenced him to (a) concurrent terms of probation, five years for each of Counts III, IV, and V, and six months for Count VI; (b) a term of imprisonment for 243 days, with credit for time already served; and (c) pay \$100 to the crime victim compensation fund.

On November 12, 2004, Thomas filed a notice of appeal. This appeal was assigned to this court on June 20, 2006.

The question is whether FsOF nos. 1 through 6 and COL no. 4 adequately support COL no. 5.

In the memorandum in support of the Motion to Suppress Items of Evidence, Thomas argued that the search and seizure of items on his person were illegal because there was (a) no reasonable basis to detain him and perform a protective search of him for weapons, and (b) no probable cause to justify his arrest.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

On appeal, Thomas argues that the police did not have probable cause to arrest him "simply because the straw was seen some time long after [Thomas] had exited the vehicle[.]" He points out that "no one saw him with the straw or any of the drugs before his arrest, nor did anyone see him dispose of the straw while exiting the vehicle." He contends that the lighter and the drugs "had not been left by Thomas but by another person, i.e., co-Defendant Leong." He argues that (a) "[i]t was not 'reasonable to assume that it belonged to Thomas or that Thomas possessed it prior to exiting the vehicle'"; (b) "[i]t was reasonable to assume only that Leong had placed it or that the police officer didn't know where or when it came from"; (c) "other than the straw being on the seat, nothing linked Thomas to this alleged plain view observation"; and (d) "[i]t is more reasonable to assume that Thomas just sat on it or that Leong had disposed of it when Barnett was not looking! Again, Thomas was observed exiting the vehicle, walking away over 100 feet, and making no suspicious gestures. How could Judge Kochi conclude that Thomas actually possessed it? Nonsense!"

In light of the facts, we agree with the State that Thomas was legally detained and arrested for possession of marijuana. Officer Barnett reasonably inferred that the straw and its contents belonged to the last person known to occupy the seat upon which they were found.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

Therefore, IT IS HEREBY ORDERED that the Judgment Guilty Conviction and Probation Sentence entered on November 3, 2004 is affirmed.

DATED: Honolulu, Hawai'i, September 1, 2006.

On the briefs:

Jerry I. Wilson
for Defendant-Appellant.

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge