

NO. 24785  
IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

SHAWN IRISH WHITE, Defendant-Appellant.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(Cr. No. 99-1921)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,  
Ramil, and Acoba, JJ.)

The defendant-appellant Shawn Irish White appeals from the judgment of the first circuit court, the Honorable Karen S.S. Ahn presiding, convicting him of and sentencing him for the offenses of promotion of a dangerous drug in the third degree, in violation of Hawai'i Revised Statutes (HRS) § 712-1243 (1993), and unlawful use of drug paraphernalia, in violation of HRS § 329-43.5(a) (1993). White argues that the circuit court erred in denying his motion to suppress statements and items, on the basis that the evidence at issue was the fruit of an illegal search conducted by hotel security "for a state purpose, i.e.[,] to preserve the scene of an alleged crime for the [Honolulu Police Department (HPD)]."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the circuit court's judgment of conviction and sentence. "[T]he correct test for determining whether a private individual is a government agent is the 'totality of the circumstances

test.'" State v. Kahoonei, 83 Hawai'i 124, 130, 925 P.2d 294, 300 (1996). In Kahoonei, this court noted that some of the relevant factors that may be considered in the inquiry include "whether the private individual: (1) was actively recruited; (2) was directed by a government agent; (3) acted for a private purpose; and (4) received any payment for his or her services." Id. at 127, 925 P.2d at 297 (citing State v. Byonton, 58 Haw. 530, 537-38, 574 P.2d 1330, 1335 (1978)).

In the present matter, the hotel security guards discovered the drug paraphernalia before the HPD became involved in the matter; the security guards were private individuals who acted on their own accord, for their own purposes, and without deriving any benefit from the police for their actions. Thus, whether or not the security guards' actions may have constituted an illegal search and seizure had they been HPD police officers, they violated neither the state nor federal constitutions in the present matter because the record is devoid of any evidence that they were government agents. Consequently, the evidence seized and the statements made by White cannot constitute fruit of the poisonous tree. Accordingly, we hold that the circuit court did not err in denying White's motion to suppress. Therefore,

IT IS HEREBY ORDERED that the circuit court's judgment and sentence from which the appeal is taken are affirmed.

DATED: Honolulu, Hawai'i, September 11, 2002.

Stephan M. Shaw,  
for the defendant-appellant  
Shawn Irish White

Alexa D. M. Fujise (DPA),  
for the plaintiff-appellee,  
State of Hawai'i