

CONCURRING AND DISSENTING OPINION BY NAKAYAMA, J.

I agree that this court has appellate jurisdiction to address the merits of the prosecution's appeal for the reasons stated in section III A of the majority opinion. I disagree, however, with the majority's conclusion that Officer Kashimoto had reasonable suspicion to stop Bohannon. Thus, for the reasons that follow, I respectfully dissent as to section III B of the majority opinion.

Article I, section 7 of the Hawai'i Constitution was designed, inter alia, to safeguard the privacy of individuals against arbitrary, oppressive, and harassing invasions by the police. State v. Trainor, 83 Hawai'i 250, 259, 925 P.2d 818, 827 (1996) (citation omitted). To ensure against such invasions, this court has applied an objective reasonable suspicion test in the event of an investigatory automobile stop by the police. See State v. Bolosan, 78 Hawai'i 86, 94, 890 P.2d 673, 681 (1995) ("[W]e hold that an investigative stop can be justified based on an objectively reasonable suspicion[.]").

Under this test, an investigating police officer must point to "specific and articulable facts warranting a reasonable belief that criminal activity is afoot." Trainor, 83 Hawai'i at 259, 925 P.2d at 827 (citations, ellipsis, and brackets omitted). Whether articulated facts support an objective belief of on-going criminal activity involves evaluating the totality of the circumstances. Kernan v. Tanaka, 75 Haw. 1, 38, 856 P.2d 1207, 1226 (1993). The key in such an analysis is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." Id. at 37, 856 P.2d at 1225 (citations omitted).

Under the circumstances as articulated by Officer Kashimoto in this case, I do not believe that Bohannon's actions supported an objectively reasonable belief that criminal activity was afoot. The facts articulated by Officer Kashimoto indicate that, during the early morning hours, at the intersection of Kalakaua Avenue and Ala Wai Boulevard, Bohannon came to an abrupt stop within two feet of Officer Kashimoto's vehicle, resulting in a two-second screeching of tires. The totality of these circumstances is insufficient to warrant an invasion into an individual's personal security. To hold otherwise, would be tantamount to permitting arbitrary investigatory automobile stops that the safeguards in article I, section 7 of the Hawai'i Constitution were intended to protect against. Based on the foregoing, I respectfully dissent as to section III B of the majority opinion.