

NO. 24187

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant,

vs.

VANESSA R. LOPES, Defendant-Appellee.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 00-1-2402)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Nakayama, JJ.;  
Acoba, J., Concurring Separately, with whom  
Ramil, J., joins)

Defendant-appellee Vanessa R. Lopes was charged with promoting a dangerous drug in the third degree, Hawai'i Revised Statutes (HRS) § 712-1243 (1993 & Supp. 2001) (Count I), and unlawful use of drug paraphernalia, HRS § 329-43.5(a) (1993) (Count II). Following a hearing on Lopes's motion to suppress, the Honorable Reynaldo Gaulty entered findings of fact, conclusions of law, and an order granting Lopes's motion to suppress evidence.

According to the testimony at the hearing, on November 4, 2000, Lopes arrived at the Honolulu Police Department Chinatown Substation to report an alleged assault by Dante Baguion (Dante). The police attempted to separate Lopes from Dante and his wife, who were outside the substation, Lopes being

told several times during the investigation to remain in the station house. While inside the substation, Lopes was asked several questions by Officer Tai Nguyen. Within two minutes of asking Lopes questions about her name and before he was "able to figure out exactly what was going on[,] " Officer Nguyen ran a warrant check on Lopes through dispatch, using his portable radio. Dispatch informed Officer Nguyen that Lopes "had a parole retake warrant."<sup>1</sup> Officer Nguyen asked dispatch to confirm the warrant. Nguyen told Lopes "that she's going in for that retake warrant." Lopes then handed a pouch containing a glass pipe, which appeared to contain crystal methamphetamine residue to him. The pipe and residue constituted the bases for the charge.

"Usually," Officer Nguyen runs warrant checks on parties involved in arguments "when [he] do[esn't] know who's the suspect or not." He testified that Lopes was never a suspect in any fight and conceded that arguing is not a crime. In suppressing the pipe and residue, the court found that "Officer Nguyen took [Lopes] inside the Substation, requested [Lopes] to provide her name, date of birth[,] and social security number; and Officer Nguyen requested dispatch to conduct a warrant check with the information which [Lopes] provided[]" and that, "[w]hen Officer Nguyen requested the warrant check, Officer Nguyen had not observed [Lopes] engaging in any illegal activity, and

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<sup>1</sup> The record does not reflect what a "parole retake warrant" is.

[Lopes] was not a 'suspect' in any crime at that point." The court concluded that, "[b]ecause there were no specific and articulable facts presented, . . . on which to base a reasonable suspicion that [Lopes] had engaged in any criminal activity, there was consequently no constitutionally valid basis for conducting the warrant check" and that the pipe was a "fruit of the poisonous tree."

In reviewing a trial court's ruling on a motion to suppress, evidence, we consider whether the court's findings of fact were clearly erroneous. See State v. Edwards, 96 Hawai'i 224, 231, 30 P.3d 238, 245 (2001). "A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made." Id. (quoting State v. Eleneki, 92 Hawai'i 562, 564, 993 P.2d 1191, 1193 (2000)). We also consider de novo whether the court's conclusions were right or wrong. See Edwards, 96 Hawai'i at 231-32, 30 P.3d at 245-46 (citing State v. Jenkins, 93 Hawai'i 87, 100, 997 P.2d 13, 26 (2000) and Eleneki, 92 Hawai'i at 564, 993 P.2d at 1193).

Contrary to the prosecution's argument, the court did not clearly err in rendering its Finding 9. The finding comports with the undisputed testimony given at trial. Also, the court's

conclusion that Lopes was seized at the time Officer Nguyen asked her for information to perform a warrant check is not reversible error. “[T]he police may temporarily detain an individual if they have a reasonable suspicion based on specific and articulable facts that criminal activity is afoot.” State v. Trainor, 83 Hawai‘i 250, 255-56, 925 P.2d 818, 823-24 (1996) (internal quotation marks and citations omitted). See State v. Kearns, 75 Haw. 558, 568-69, 867 P.2d 903, 908 (1994).

But a detention, initially legal, may devolve into an illegal one where its scope or duration exceeds its purpose. The purpose of Officer Nguyen’s detention of Lopes was to conduct an investigation, i.e., to ascertain what was occurring, and, in conjunction therewith, to separate Lopes from contact with Dante and his wife. Lopes did not volunteer that she had an outstanding warrant. Cf. State v. Silva, 91 Hawai‘i 111, 114, 979 P.2d 1137, 1140 (App. 1999). The warrant check Officer Nguyen conducted was unnecessary to fulfilling the purpose of his investigation. When Officer Nguyen asked police radio to ascertain if Lopes had any warrants, he in effect suspended his investigation for a purpose unconnected with the inquiry at hand.

The time necessary for Officer Nguyen to call in the warrant check and to receive the information following the check extended Lopes’s detention. According to the complaint history of the incident, approximately a minute after requesting the

warrant check, Officer Nguyen learned that Lopes had a warrant and, within another minute, asked police dispatch to confirm the warrant. Approximately seven minutes later, the warrant was confirmed. While awaiting the warrant confirmation, Officer Nguyen and police dispatch spent some time addressing Lopes's aliases. Officer Nguyen ran the warrant check before finishing his investigation of the case and, in fact, never completed a report on Lopes's allegation of Dante's harassment.

Detaining Lopes beyond the objective of investigating the incident for the purpose of doing a warrant check exceeded that degree of intrusion absolutely necessary under the circumstances of this case. See State v. Silva, 91 Hawai'i 80, 81, 979 P.2d 1106, 1107 (1999); State v. Barros, No. 23755 (Haw. June 20, 2002). Accordingly, that part of the detention related to the warrant check procedure constituted an unreasonable seizure under article I, section 7 of the Hawai'i Constitution. Inasmuch as the alleged drug and paraphernalia were fruits of the illegal detention, they were rightfully suppressed. See State v. Fukusaku, 85 Hawai'i 462, 475, 946 P.2d 32, 45 (1997); see also State v. Lopez, 78 Hawai'i 433, 447, 896 P.2d 889, 903 (1995); State v. Pau'u, 72 Haw. 505, 509-10, 824 P.2d 833, 836 (1992).

The result reached by the court was correct, but on the grounds set forth herein. Nevertheless, Justice Acoba, in his concurring opinion, again complains about the majority's decision

not to publish the disposition of this case "in which a rule of law is applied to a new situation." Concurring opinion at 1. The "new situation" is the fact that Lopes was initially a "witness," rather than a "suspect," when she was detained by the police. We note, however, that, from the police officer's perspective, it is often not known who is a witness, a suspect, or an unrelated passerby at the time the officer initially investigates an incident. In the present case, Lopes is a defendant. The distinction raised by Justice Acoba in his concurring opinion is a distinction without a difference.

Thus, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the judgment of the first circuit court, filed on March 8, 2001, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, September 6, 2002.

On the briefs:

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