NO. 25096

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee,

vs.

SEAN K. CLEVELAND, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(Case Nos. TR1P-TR3P: 4/10/02)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, JJ., and
Circuit Judge Amano, assigned by reason of vacancy,
and Acoba, J., concurring separately)

The defendant-appellant Sean K. Cleveland appeals from the judgment of the district court of the second circuit court, Wailuku Division, the Honorable Douglas H. Ige presiding, convicting him of the offenses of driving under the influence of intoxicating liquor (DUI), in violation of Hawaiʻi Revised Statutes (HRS) § 291-4 (Supp. 2000), inattention to driving, in violation of HRS § 291-12 (Supp. 2002), and failure to drive on right side of roadway, in violation of HRS § 291C-41 (1993). Cleveland argues that the district court, the Honorable Jan K. Apo presiding, erred in denying his motion to suppress statements that he made to Maui Police Department (MPD) Officer Mark Vickers on the date of the alleged offenses, on the basis that Officer Vickers subjected him to "custodial interrogation" without first providing him with Miranda warnings.

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.

It is settled in Hawai'i that "the requirement of Miranda warnings is triggered by '[t]wo criteria': '(1) the defendant must be under interrogation; and (2) the defendant must be in custody.'" State v. Ah Loo, 94 Hawai'i 207, 210, 10 P.3d 728, 731 (2000) (quoting State v. Kauhi, 86 Hawai'i 195, 204, 948 P.2d 1036, 1045 (1997) (quoting State v. Blanding, 69 Haw. 583, 586, 752 P.2d 99, 100 (1988))). Inasmuch as Officer Vickers subjected Cleveland to "express questioning," Cleveland was "interrogated." See id. (citing State v. Melamai, 64 Haw. 479, 481 n.3, 643 P.2d 541, 544 n.3 (1982)).

> "To determine whether 'interrogation' is 'custodial,' we look to the totality of the circumstances, focusing on 'the place and time of the interrogation, the length of the interrogation, the nature of the questions asked, the conduct of the police, and [any] other relevant circumstances.'" Ah Loo, 94 Hawai'i at 210, 10 P.3d at 731 (quoting Melemai, 64 Haw. at 481, 643 P.2d at 544) (brackets in original). Again, the question to be answered, once it is determined that a defendant has been "interrogated" within the meaning of article I, section 10, is whether the defendant, at the time of the "interrogation," was "in[ ] custody or otherwise deprived of his [or her] freedom . . . in any significant way[.]" . . . [State v.]Hoey, 77 Hawai'i [17,] 33, 881 P.2d [504,] 520 [(1994)] (citations omitted).

State v. Ketchum, 97 Hawai'i 107, 122, 34 P.3d 1006, 1021 (2001) (footnote omitted).

> As we recently noted in Ah Loo, "no precise line can be drawn" delineating when "custodial interrogation," as opposed to non-custodial "on-the-scene" questioning (which is outside the protection against self-incrimination that article I, section 10 affords to an accused), has occurred. 94 Hawai'i at 210, 10 P.3d at 731 (citations, internal quotation signals, and original brackets omitted). Rather, the question whether a person has been significantly deprived of his or her freedom, such that he or she is "in custody" at the time he or she is "interrogated," must be

> addressed on a case-by-case basis "because each case must necessarily turn upon its own facts and circumstances." [State v.]Patterson, 59 Haw. [357,] 362, 581 P.2d [752,] 756 [(1978)].
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> . . . Ah Loo reiterates the basic principle that when an officer lawfully conducting an investigative detention lacks probable cause to arrest the detainee and -- so long as his or her questions remain brief and casual and do not become sustained and coercive -- has not impliedly accused the detainee of committing a crime, the officer has not significantly infringed upon the detainee's liberty, such that the detainee is "in custody" and has thus been transformed into an "accused" to whom the protection against self-incrimination attaches.
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> But, under Ah Loo, once a detainee becomes expressly or impliedly accused of having committed a crime -- because the totality of the circumstances reflects either that probable cause to arrest the detainee has developed or that the officer's questions have "become sustained and coercive," the officer's investigation having focused upon the detainee and the questions no longer being designed to dispel or confirm the officer's reasonable suspicion --, then Miranda warnings, as well as a valid waiver [of] the detainee's related constitutional rights, are required before the fruit of further questioning can be introduced in a subsequent criminal proceeding against the detainee. Id. at 212, 10 P.3d at 733.

Id. at 123-24, 34 P.3d at 1022-23 (footnote omitted).

Accordingly, in Ah Loo, this court held that a police officer was not required to "Mirandize" Ah Loo -- a youth whom the officer observed in possession of liquor in a public place -- prior to asking him his age, because "[p]rior to questioning Ah Loo, [the officer] lacked probable cause to arrest him but had reasonable suspicion, predicated on the officer's experience and observation of Ah Loo's physical appearance, that he was below the age of twenty-one." 94 Hawai'i at 211, 10 P.3d at 732. By contrast, in Ketchum, this court held that a police officer who asked Ketchum his home address, after (1) "the forcible entry into the residence of numerous police officers, who were simultaneously locating and detaining any and all occupants discovered within the residence," and (2) the officer stated "his authority and order[ed] Ketchum . . . to display [his] hands[,] . . . a show of force and authority far exceeding that which

inhered in the officers' mere presence[,]" had effected a de facto arrest and, therefore, had subjected Ketchum to "custodial interrogation" for purposes of article I, section 10 of the Hawai'i Constitution. 97 Hawai'i at 127, 34 P.3d at 1026. This court reasoned that, "given the totality of the circumstances described above, an 'innocent person [in Ketchum's position] could[, indeed, would] reasonably have believed that he [or she] was not free to go and that he [or she] was being taken into custody indefinitely[.]" Id.

Looking at the totality of the circumstances in the present matter, it is clear that Officer Vickers subjected Cleveland to a lawful "investigative detention" rather than "custodial interrogation" prior to arresting him. Officer Vickers testified that he did not have any reason to suspect Cleveland of DUI until he made contact with him and observed that Cleveland's eyes were red and watery. After Officer Vickers noticed the foregoing signs of intoxication and Cleveland explained that he had been drinking beer with his fiancee's father, Officer Vickers clearly had a reasonable suspicion that Cleveland was DUI, and his subsequent questions regarding the cause of the accident and whether Cleveland would be willing to perform a field sobriety test were "designed to confirm or dispel [his] reasonable suspicion." Ah Loo, 94 Hawai'i at 211, 10 P.3d at 732; cf. Ketchum, 97 Hawai'i at 127, 34 P.3d at 1026. Moreover, Officer Vickers posed his questions in a noncoercive manner, "accompanied by no greater exhibition of authority than that inherent in [Officer Vickers's] mere presence and no display of force whatsoever." Ketchum, 97 Hawai'i at 127, 34 P.3d at 1026 (describing the questioning in Ah Loo, 94 Hawai'i at 209, 10 P.3d at 730, and contrasting it with the "show of force and

authority" involved in Ketchum). Officer Vickers questioned Cleveland at the scene of the accident (a public place), immediately following the accident, and after Cleveland approached Officer Vickers of his own accord.

Consequently, Officer Vickers was not required to provide Cleveland with Miranda warnings prior to questioning him regarding the cause of the motor vehicle accident in which Cleveland was involved. Accordingly, we hold that the circuit court did not err in denying Cleveland's motion to suppress. Therefore,

IT IS HEREBY ORDERED that the district court's judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 26, 2003.

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