NO. 22720

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
LARRY P. IVERSON, aka Jamal Galisa,
Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-2318)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Watanabe, and Lim, JJ.)

In accordance with Hawaiʻi 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,

> [w]ith respect to motions to suppress evidence recovered at police searches, Professor Wright says:
>
> If a motion to suppress is denied, this becomes the law of the case and the illegality of the search cannot ordinarily be relitigated by objection to the evidence at the trial. But the preliminary denial cannot be binding in all circumstances. The ruling on the motion is an interlocutory one, and if new facts come to light at the trial, the court is free to reconsider the legality of the search on objection to the evidence. . . .
>
> 3 C. Wright, *Federal Practice and Procedure*: Criminal 2d § 676 (1982) (footnotes omitted).
>
> In other words, when the defendant's pretrial motion to suppress is denied and the evidence is subsequently introduced at trial, the defendant's appeal of the denial of the motion to suppress is actually an appeal of the introduction of the evidence at trial. Consequently, when deciding an appeal of the pretrial denial of the defendant's motion to suppress, the appellate court considers both the record of the hearing on the motion to suppress and the record of the trial. State v. Nakachi, 7 Haw. App. 28, 33 n.7, 742 P.2d 388, 392 n. 7 (1987); State v. Uddipa, 3 Haw. App. 415, 416-17, 651 P.2d 507, 509 (1982); State v. Crowder, 1 Haw. App. 60, 66-67, 613 P.2d 909, 914 (1980).

State v. Kong, 77 Hawai‘i 264, 266, 883 P.2d 686, 688 (App. 1994).

Upon a review of the entire record pursuant to Kong, 77 Hawai‘i at 266, 883 P.2d at 688, we conclude that the facts, measured by an objective standard, warranted a person of reasonable caution in believing that criminal activity was afoot and that the investigative stop of Defendant-Appellant Larry P. Iverson by the police was appropriate. Therefore, the investigative stop is not a basis for concluding that the evidence obtained during the investigative stop and thereafter was unlawfully obtained and erroneously admitted into evidence.

IT IS HEREBY ORDERED that the judgment from which the appeal is taken, filed on July 27, 1999, is affirmed.

DATED: Honolulu, Hawai'i, September 22, 2000.

On the briefs:

Stuart N. Fujioka
(Nishioka & Fujioka,
of counsel)
for Defendant-Appellant.

Chief Judge

Mangmang Q. Brown,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge