

## NOT FOR PUBLICATION

NO. 26430

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ADOLFO J. CABILES, Defendant-Appellant

K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 02-1-0670)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Foley and Nakamura, JJ.)

Defendant-Appellant Adolfo J. Cabiles (Cabiles) appeals from the Judgment filed on February 6, 2004 in the Circuit Court of the First Circuit (circuit court).<sup>1/</sup> After a jury-waived trial, the circuit court found Cabiles guilty, as charged, of:

Count I: Promoting a Dangerous Drug in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2001)<sup>2/</sup>;

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<sup>1/</sup> The Honorable Derrick H. M. Chan presided over the trial of Defendant-Appellant Adolfo J. Cabiles (Cabiles). The Honorable Reynaldo D. Gaulty presided over the hearing on Cabiles' Motion to Suppress Items of Evidence.

<sup>2/</sup> Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2001) provides in relevant part:

**§712-1243 Promoting a dangerous drug in the third degree.**

(1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

Count II: Unlawful Use of Drug Paraphernalia, in violation of HRS § 329-43.5 (a) (1993)<sup>3/</sup>;

Count III: Disorderly Conduct, in violation of HRS § 711-1101(1) (a) & (3) (1993 & Supp. 2005)<sup>4/</sup>;

Count IV: Assault in the Third Degree, in violation of HRS § 707-712(1) (a) (1993)<sup>5/</sup>; and

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<sup>3/</sup> HRS § 329-43.5 (1993) provides in relevant part:

**§329-43.5 Prohibited acts related to drug paraphernalia.**

(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

<sup>4/</sup> HRS § 711-1101(1) (a) and (3) (1993 & Supp. 2005) provides:

**§711-1101 Disorderly conduct.** (1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or threatening, or in violent or tumultuous behavior[.]

. . . . .

(3) Disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if the defendant persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

<sup>5/</sup> HRS § 707-712 (1993) provides in relevant part:

**§707-712 Assault in the third degree.** (1) A person commits the offense of assault in the third degree if the person:

(a) Intentionally, knowingly, or recklessly causes bodily injury to another person[.]

. . . . .

(2) Assault in the third degree is a misdemeanor unless  
(continued...)

Count V: Harassment, in violation of HRS § 711-1106(1)(a) (2005).<sup>§/</sup>

The circuit court sentenced Cabiles to five years of incarceration on each of Counts I and II, one year of incarceration on Count IV, and thirty days of incarceration on Counts III and V, all sentences to run concurrently. The circuit court also ordered Cabiles to pay a "crime victim compensation fee" of \$275; however, the circuit court waived the fee due to Cabiles' inability to pay.

On appeal, Cabiles argues:

(1) The circuit court erred in denying his Motion to Suppress Items of Evidence (Motion to Suppress) because in the court's June 4, 2003 Findings of Fact, Conclusions of Law, and Order Denying Motion to Suppress Items of Evidence: (a) portions of Findings of Fact (MFOFs) 1, 4, 7, and 10 and all of MFOFs 8,

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<sup>§/</sup>(...continued)  
committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

<sup>§/</sup> HRS § 711-1106 (2005) provides in relevant part:

**§711-1106 Harassment.** (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

(a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact[.]  
.....

(2) Harassment is a petty misdemeanor.

9, 11, 12, and 13 were clearly erroneous; (b) portions of Conclusions of Law (MCOs) 1 and 3 and all of MCOL 2 were wrong; and (c) the written MFOs and MCOs did not comport with the court's oral findings and conclusions.

(2) The circuit court erred in finding him guilty as charged because in the circuit court's May 23, 2003 Findings of Fact and Conclusions of Law following Cabiles' trial: (a) portions of Findings of Fact (TFOs) 9, 16, and 20, and all of TFO's 19 and 21 were clearly erroneous; (b) Conclusions of Law (TCOLs) 2 through 6, 8 through 11, and 13 were wrong because these were findings of fact rather than conclusions of law; (c) even as findings of fact, the first sentence of TCOL 8 and the second sentence of TCOL 11 were clearly erroneous; and (d) the third and fourth sentences of TCOL 7 were findings of fact rather than conclusions of law and were erroneous, and the conclusion of law in the fifth sentence of TCOL 7 was wrong because the findings in the third and fourth sentences did not support the conclusion in the fifth sentence.

(3) Absent the clearly erroneous TFOs and TCOLs, the circuit court's verdicts were based on insufficient evidence.

Upon careful review of the record and the briefs submitted by the parties, we hold that:

(1) The phrase "between 6:30 p.m. and" in MFOF 1, the first and second sentences of MFOF 4, and the second and third sentences of MFOF 10 are clearly erroneous.<sup>2/</sup> However, the fact that these MFOFs are clearly erroneous does not effect the outcome in the instant case.

(2) The fourth sentence of MFOF 4, the portion of MFOF 7 reading "Tosie and," and MFOFs 8, 9, 11, 12, and 13 are not clearly erroneous.

(3) MCOL 1 is not wrong. State v. Barnes, 58 Haw. 333, 338, 568 P.2d 1207, 1211 (1977); State v. Taniguchi, 72 Haw. 235, 240, 815 P.2d 24, 26 (1991); State v. K.V., 821 So. 2d 1127, 1127-28 (Fla. 2002); State v. Luke, 995 S.W.2d 630, 633-37 (Tenn. 1998); In re J.J., a Minor, 183 Ill. App. 3d 381, 386-87, 539 N.E.2d 764, 767, 132 Ill. Dec. 201, 204 (1989); State v. Harrell, 67 N.C. App. 57, 62, 312 S.E.2d 230, 234-35 (1984); State v. Loo, 94 Hawai'i 207, 211, 10 P.3d 728, 732 (2000). Furthermore, regardless of whether the circuit court's oral MCOLs on whether Officer Kaheaku had reasonable suspicion to stop Cabiles conflicted with the circuit court's oral MFOFs and the evidence, "[a] trial court's written findings of fact prevail when a discrepancy exists between those findings and the court's prior

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<sup>2/</sup> When deciding Cabiles' appeal of the circuit court's pretrial denial of his motion to suppress, this court considered both the record of the hearing on the motion to suppress and the record of the trial. State v. Kong, 77 Hawai'i 264, 266, 883 P.2d 686, 688 (App. 1994).

memorandum opinion or oral ruling.' Fenske v. Fenske, 542 N.W.2d 98, 102 (N.D. 1996)." State v. Causer, 678 N.W.2d 552, 564 (N.D. 2004). In addition, MCOLs 2 and 3 are not wrong.

(4) The portion of TFOF 9 stating that "[Cabiles] was not a guest of anyone at Eaton Square," is clearly erroneous. TFOF 19 is clearly erroneous because nothing in the record on appeal supports it. TFOF 20 is not clearly erroneous because Officer Kaheaku testified as to her motivation for approaching Cabiles. However, the fact that TFOFs 9 and 19 are clearly erroneous does not effect the outcome in the instant case.

(5) The portion of TFOF 16 that reads, "she [Officer Kaheaku] approached Slater to learn about the situation," and TFOF 21 are not clearly erroneous.

(6) TCOLs 2 through 6, 8 through 11, and 13 are actually findings of fact. However, even though the circuit court characterizes a finding of fact as a conclusion of law, it will be binding upon this court as a finding of fact unless clearly erroneous. Molokoa Village Development Co., Ltd v. Kauai Elec. Co., Ltd., 60 Haw. 582, 596, 593 P.2d 375, 384 (1979).

(7) Regardless of whether the first sentence of TCOL 8 basically reiterates TFOF 21 and completely describes what happened at that point of the incident and the second and third

sentences of TCOL 8 roughly follow TFOFs 22 through 25, "[a] conclusion of law that is supported by the trial court's findings of fact and that reflects an application of the correct rule of law will not be overturned." Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994) (internal quotation marks and citations omitted).

(8) The second sentence of TCOL 11 and the third and fourth sentences of TCOL 7, which are findings of fact, are also clearly erroneous, as there is no evidence in the record on appeal in the instant case to support them. However, the fact that these TCOLs are clearly erroneous does not effect the outcome in the instant case.

(9) The fifth sentence of TCOL 7 is not wrong as a conclusion of law because Officer Kaheaku did have reasonable suspicion to conduct an investigatory stop of Cabiles. Barnes, 58 Haw. at 338, 568 P.2d at 1211; State v. K.V., 821 So. 2d at 1127-28; State v. Luke, 995 S.W.2d at 633-37; In re J.J., a Minor, 183 Ill. App. 3d at 386-87, 539 N.E.2d at 767, 132 Ill. Dec. at 204; Harrell, 67 N.C. App. at 62, 312 S.E.2d at 234-35; Loo, 94 Hawai'i at 211, 10 P.3d at 732.

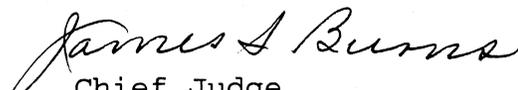
Therefore,

IT IS HEREBY ORDERED that the Judgment filed on February 6, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 17, 2006.

On the briefs:

Phyllis J. Hironaka,  
Deputy Public Defender,  
for Defendant-Appellant.

  
Chief Judge

Daniel H. Shimizu,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Associate Judge

  
Associate Judge