

NOT FOR PUBLICATION

NO. 26760

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ANTHONE K. SANTARONE, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-0754)

SUMMARY DISPOSITION ORDER

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

Anthone K. Santarone (Defendant) appeals the August 9, 2004 judgment of the Circuit Court of the First Circuit (circuit court)¹ that convicted him, upon a jury's verdicts, of unauthorized control of a propelled vehicle and driving without a license.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we hold that the circuit court's February 23, 2005 order, which denied Defendant's April 19, 2004 motion to suppress the white Toyota pickup truck, the fruits of the seizure and search thereof, and any photographs of the truck, was correct. State v. Vinuya, 96 Hawai'i 472, 480, 32 P.3d 116, 124 (App. 2001) (appellate courts "review the circuit court's ruling on a motion to suppress *de novo* to determine whether the ruling was right or wrong"

¹ The Honorable Karen S.S. Ahn presided.

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(citation and internal quotation marks omitted)).

On the record of the suppression hearing and the jury trial, id. at 481, 32 P.3d at 125 ("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" (citations and internal block quote format omitted)), it is dispositive that Defendant had no reasonable expectation of privacy in the truck, either as a mere passenger in the truck, as Defendant testified at trial, see, e.g., State v. Tau'a, 98 Hawai'i 426, 434, 49 P.3d 1227, 1235 (2002) ("a 'passenger qua passenger' does not have a legitimate expectation of privacy in the vehicle in which he or she is a passenger") (citation omitted)); State v. Araki, 82 Hawai'i 474, 482-84, 923 P.2d 891, 899-901 (1996) (defendant had no reasonable expectation of privacy in materials seized that he did not own), or as the driver of a stolen truck, as the other evidence indicated. See, e.g., State v. Abordo, 61 Haw. 117, 123, 596 P.2d 773, 777 (1979) ("possession of the thing searched was wrongful. . . . we fail to discern any constitutionally recognized privacy interest arising in appellant's favor"); State v. Pokini, 45 Haw. 295, 314, 367 P.2d 499, 509 (1961) ("the search and seizure were conducted in a vehicle which defendants were occupying unlawfully, . . . Defendants had no standing to attack the search of the vehicle or the seizure of the guns" (citations omitted)), clarified on other grounds, State v.

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Teixeira, 50 Haw. 138, 142 n.2, 433 P.2d 593, 597 n.2 (1967).

Even assuming, *arguendo*, that there was a constitutionally significant connection between Defendant's arrest on unrelated matters and the seizure and search of the truck -- which connection Defendant asserted below but now adamantly denies, Reply Brief at 5-6 ("Defendant's position is that the search and seizure of the truck was illegal *whether Defendant's arrest was legal or not*" (emphasis in the original; citation omitted) -- we note the largely undisputed evidence that Defendant's girlfriend, the tenant of the residence where the police went to arrest Defendant, authorized her thirteen-year-old son to let the police into the residence; that she authorized the police to enter the bedroom in which Defendant was arrested; and that she authorized the police to remain on the premises to inspect the truck. See Vinuya, 96 Hawai'i at 484, 32 P.3d at 128 (recognizing "the consent exception to the warrant requirement" (citation omitted)).

As Defendant conceded below, once the police were in any wise constitutionally secure in their presence on the premises, the truck was in plain view, see State v. Cuntapay, 104 Hawai'i 109, 118, 85 P.3d 634, 643 (2004) (parsing "the plain view seizure of contraband"), and while

there may be some question whether constitutional concerns required a warrant in this case of a seizure on private property, [Florida v. White, 526 U.S. [559,] 565, 119 S.Ct. 1555[, 143 L.Ed.2d 748 (1999)]; United States v. Brookins, 228 F.Supp.2d 732, 742 (E.D.Va.2002) (interpreting the White holding, *supra*, to apply only where the motor vehicle is seized in a public place),

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nonetheless, the seizure here occurred after [Defendant's girlfriend] had [authorized] the police [to remain on her] property to inspect [the] truck[] and the inspection turned up probable cause to believe the truck[was] contraband. Cf. [State v.]Davenport, 55 Haw. [90,] 101, 516 P.2d [65,] 72 [(1973)].

Lum v. Donohue, 101 Hawai'i 422, 433, 70 P.3d 648, 659 (App.

2003). "So long as the searching officer is in a position where he is lawfully entitled to be, the seizure of any evidence of crime is permissible." Davenport, 55 Haw. at 100-101, 516 P.2d at 72 (citation omitted; emphasis in the original) (noting the "easy mobility of such contraband," in upholding a police search, upon a warrant to search the defendant's house for marijuana, of a matchbox that revealed amphetamine and cocaine). But this discussion *arguendo* remains just that, for in any event and again, the salient and dispositive fact here is that Defendant lacked a reasonable expectation of privacy in the truck.

Therefore,

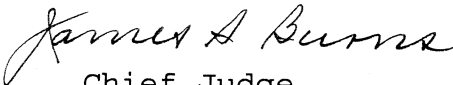
IT IS HEREBY ORDERED that the August 9, 2004 judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, February 7, 2006.

On the briefs:

Michael J. Park
for Defendant-Appellant.

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


Chief Judge


Associate Judge


Associate Judge