DISSENTING OPINION BY NAKAMURA, J.

I respectfully dissent. I find persuasive the numerous cases in other jurisdictions that have held, under almost identical circumstances, that the discovery of an outstanding arrest warrant dissipated the taint of an initial unlawful detention. E.g., State v. Page, 103 P.3d 454 (Idaho 2004); State v. Hill, 725 So.2d 1282 (La. 1998); United States v. Green, 111 F.3d 515 (7th Cir. 1997); McBath v. State, 108 P.3d 241, 245-47 (Alaska Ct. App. 2005) (citing cases reaching the same conclusion from Washington, Florida, Colorado, Missouri, Nebraska, Georgia, Texas, Louisiana, Illinois, Kansas, Indiana, and Kentucky).[1]

The police ran a warrant check while detaining Defendant-Appellee Alden Shimabukuro, Jr. (Shimabukuro). The warrant check took less than one minute and revealed the existence of two outstanding bench warrants. Shimabukuro was arrested on the outstanding warrants, and during a pat-down search of Shimabukuro after his arrest, the police discovered a glass pipe containing drug residue. Assuming, as the prosecution concedes, that Shimabukuro's investigative detention was unlawful, the discovery of the outstanding bench warrants was an intervening circumstance that broke the connection between the

[1] In McBath v. State, 108 P.3d 241, 245 (Alaska Ct. App. 2005), the court identified Washington as one of the states with supporting authority. In State v. Rife, 943 P.2d 266, 271 (Wash. 1997) (en banc), however, the Washington Supreme Court held that the evidence should have been suppressed under facts analogous to Defendant-Appellee Alden Shimabukuro, Jr.'s case. The McBath court identified Indiana and Florida as states with both supporting and opposing authority. 108 P.2d at 246-47.

recovered evidence and the unlawful detention. The recovery of the pipe with drug residue was the fruit of a lawful arrest and not the tainted fruit of an unlawful detention.

Evidence is not automatically suppressible as the fruit of the poisonous tree simply because it would not have been discovered but for the illegal conduct of the police. Wong Sun v. United States, 371 U.S. 471, 487-88 (1963); United States v. Ceccolini, 435 U.S. 268, 276 (1978). Rather, the test is:

> whether the evidence objected to as being the 'fruit' was discovered or became known by the exploitation of the prior illegality or by other means sufficiently distinguished as to purge the later evidence of the initial taint. . . . [W]here the connection between the illegal acts and the discovery of the evidence is so attenuated that the taint has been dissipated, the evidence is not a "fruit" and, therefore, is admissible.

State v. Fukusaku, 85 Hawai'i 462, 475, 946 P.2d 32, 45 (1997) (internal citations omitted) (quoting State v. Medeiros, 4 Haw. App. 248, 251 n.4, 665 P.2d 181, 184 n.4 (1983)).

I agree with the reasoning of Page, Hill, Green, and McBath. As in those cases, the discovery of Shimabukuro's outstanding bench warrants was an intervening circumstance that dissipated the taint of his initial unlawful detention. Shimabukuro's arrest and his subsequent search were not an exploitation of his unlawful detention; they were the product of authorized actions the police undertook once Shimabukuro's outstanding warrants were discovered. Hill, 725 So.2d at 1286-

87; Green, 111 F.3d at 523. In Green, 111 F.3d at 521, the court cogently observed:

> It would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to be wanted on a warrant--in a sense requiring an official call of "Olly, Olly, Oxen Free." Because the arrest is lawful, a search incident to the arrest is also lawful. The lawful arrest of [the defendant] constituted an intervening circumstance sufficient to dissipate any taint caused by the illegal automobile stop.

Any evidence recovered as the result of an unlawful investigative detention before the discovery of an outstanding arrest warrant would be subject to suppression. In general, the exclusion of such evidence provides a sufficient deterrent against police misconduct and sufficient protection for individuals' privacy rights.[2]

We want police officers to arrest a person for whom they discover an outstanding arrest warrant, not let that person go. This is true even when the outstanding arrest warrant is discovered during an illegal investigative detention. In the circumstances presented by Shimabukuro's case, the suppression of evidence recovered after the discovery of an outstanding warrant may lead to undesirable results. It would require the police to let the wanted person go free in order to dissipate the taint of

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[2] In cases where the police act with a bad faith purpose to violate the defendant's rights or the misconduct of the police is particularly flagrant, the discovery of an outstanding arrest warrant may not be sufficient to dissipate the taint of the initial unlawful detention. Brown v. Illinois, 422 U.S. 590, 603-04 (1975); United States v. Green, 111 F.3d 515, 523 (7th Cir. 1997); McBath v. State, 108 P.3d at 248-50. In those circumstances, the suppression of evidence recovered after the discovery of the warrant may be appropriate. In the present case, however, there was no evidence of bad faith or flagrant misconduct by the police.

the unlawful detention and to sanitize any evidence recovered during a search of the person after an arrest on the outstanding warrant.

I would reverse the circuit court and hold that the glass pipe with drug residue seized from Shimabukuro was admissible.

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