

## NOT FOR PUBLICATION

NO. 26951

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

STATE OF HAWAI'I, Plaintiff-Appellant, v.  
ALDEN SHIMABUKURO, JR., Defendant-Appellee

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

2006 FEB -3 AM 9:31

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CR. NO. 04-1-0235)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., and Fujise, J.;  
and Nakamura, J., dissenting)

In this prosecution of Defendant-Appellee, Alden Shimabukuro, Jr. (Shimabukuro) for Promoting a Dangerous Drug in the Third Degree in violation of Hawaii Revised Statutes (HRS) § 712-1243(1) (Supp. 2004)<sup>1</sup> and Unlawful Possession of Drug Paraphernalia in violation of HRS § 329-43.5 (1993),<sup>2</sup> Plaintiff-Appellant, the State of Hawai'i (State) appeals from the

---

<sup>1</sup> Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2004) states in relevant part:

**HRS § 712-1243(1) 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.

<sup>2</sup> HRS § 329-43.5 (1993) states in relevant part:

**HRS § 329-43.5(a) 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.

**NOT FOR PUBLICATION**

---

"Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Suppress Evidence and Statements, filed on September 13, 2004" entered on November 8, 2004 in the Circuit Court of the Third Circuit (circuit court).<sup>3</sup>

After careful review of the issue raised and the arguments made by the parties, as well as the record of the proceedings before the circuit court and the relevant case law, we resolve the State's point on appeal as follows:

Although the State does not contest the circuit court's determination that the investigating officer unlawfully approached, questioned and asked Shimabukuro for his identification, leading to the officer's further detention of Shimabukuro for the purpose of determining whether warrants existed for Shimabukuro's arrest, the State challenges the circuit court's suppression of a glass pipe, containing drug residue, that was found in Shimabukuro's possession upon a pat-down incident to his arrest authorized by warrants discovered during this detention. As the officer's motivation for the unlawful detention was to conduct a search for warrants, we cannot say that the discovery of either the outstanding warrants or the pipe and residue, was so attenuated so as to dissipate the taint of the illegality. Nor can we say that had Shimabukuro not been detained that the pipe and residue would have been

---

<sup>3</sup> The Honorable Greg K. Nakamura presided.

**NOT FOR PUBLICATION**

---

discovered. State v. Poaipuni, 98 Hawai'i 387, 392-93, 49 P.3d 353, 358-59 (2002).

Therefore,

IT IS HEREBY ORDERED that the "Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Suppress Evidence and Statements, filed on September 13, 2004" entered on November 8, 2004 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 3, 2006.

On the briefs:

Ricky R. Damerville,  
Deputy Prosecuting Attorney,  
County of Hawai'i,  
for Plaintiff-Appellant.

  
Chief Judge

Nathan Pohakea Roehrig,  
Deputy Public Defender,  
for Defendant-Appellee.

  
Associate Judge