

NOT FOR PUBLICATION

NO. 27167

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
GERALD M. ORPILLA, Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 04-1-1841)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Gerald M. Orpilla (Orpilla) appeals from the March 1, 2005 Judgment of Conviction and Probation Sentence entered in the Circuit Court of the First Circuit¹ convicting him of (1) Promoting a Dangerous Drug in the Third Degree and (2) Unlawful Use of Drug Paraphernalia.

A complaint was filed on September 17, 2004. On November 12, 2004, Orpilla filed a motion to suppress the evidence of drugs and drug-related paraphernalia obtained from his person as the result of a search incident to his arrest. This motion was denied orally on November 24, 2004 and in writing on February 7, 2005. At a jury-waived trial on December 3, 2004, the court orally found Orpilla guilty as charged. The March 1, 2005 Judgment sentenced Orpilla to probation for five years.

Orpilla filed a notice of appeal on March 9, 2005. This case was assigned to this court on December 29, 2005. The

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Findings of Fact, Conclusions of Law, and Order Denying
[Orpilla's] Motion to Suppress Items of Evidence entered on
February 7, 2005 state in relevant part:

FINDINGS OF FACT

.....
(3) . . . Officer Dorsey advised Officer Ahn to be on the lookout for [Orpilla] as he was causing trouble in the area and there was an arrest warrant out for him.

.....
(5) . . . Officer Ahn received a call to go to a City and County bus stop at Farrington Highway and Haleakala Avenue to investigate a call about a male "beating on" a female.

(6) When Officer Ahn arrived at the bus stop he saw a thin local male apparently asleep on the bus stop bench.

(7) Officer Ahn asked the man if he had seen anyone beating on a woman. The man said he had not seen anything.

(8) Officer Ahn then approached three young women sitting on a park bench near the bus stop and asked them if they had seen anything. The women said they had seen nothing.

(9) Officer Ahn then returned to the man at the bus stop and noticed that he appeared to match the description of [Orpilla] as it was given to him by Officer Dorsey:

(10) Officer [Ahn] asked the man for his name, and the man identified himself as Gerald Orpilla. He also gave his birth date.

(11) At this point Officer Ahn called Officer Dorsey to come to the location to confirm that this was the Gerald Orpilla he had been referring to,

(12) Officer Dorsey arrived within minutes and confirmed [Orpilla's] identity. Officer Ahn then called dispatch to confirm the warrant. When it was confirmed [Orpilla] was arrested.

(13) [Orpilla] was then searched incident to arrest, and the items sought to be suppressed were seen protruding from [Orpilla's] rear pocket.

(14) It was approximately seven minutes from the time Officer Ahn approached [Orpilla] (after his investigation of the alleged "beating" incident at the bus stop was completed), to investigate [Orpilla] in connection with the outstanding warrant until the warrant was confirmed.

CONCLUSIONS OF LAW

3. In this case since Officer Ahn had reasonable suspicion to believe that [Orpilla] was the subject of an arrest warrant, and at most it can be said that [Orpilla] was detained for seven minutes from the time Officer Ahn acted on that suspicion until that suspicion was confirmed, there was no illegal detention of [Orpilla], and the search executed pursuant to [Orpilla's] subsequent arrest was lawful.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we state and decide the two points on appeal as follows:

1. Orpilla contends that the police violated the following two rules:

(a) The police may not "prolong the detention of individuals subjected to brief, temporary investigative stops--once such stops have failed to substantiate the reasonable suspicion that initially justified them--solely for the purpose of performing a check for outstanding warrants." State v. Silva, 91 Hawai'i 80, 81, 979 P.2d 1106, 1107 (1999); and

(b) Warrant checks . . . performed during an illegal seizure . . . are simply unconstitutional. State v. Ramos, 93 Hawai'i 502, 511, 6 P.3d 374, 383 (App. 2000)

We conclude that neither of these two rules are relevant when the purpose of the temporary investigative stop is to substantiate a reasonable suspicion that there is an outstanding warrant for the arrest of the person being stopped.

2. Orpilla contends that the record clearly reflects that the warrant check was requested at 11:55 p.m. and came back confirmed at 12:02 a.m. and that the finding of "seven minutes"

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in finding of fact no. 14 is clearly erroneous. We agree. We conclude, however, that the temporary investigative stop of Orpilla did not exceed the time permitted by law.

Therefore, IT IS HEREBY ORDERED that the March 1, 2005 Judgment of Conviction and Probation Sentence is affirmed.

DATED: Honolulu, Hawai'i, July 10, 2006.

On the briefs:

Deborah L. Kim,
Deputy Public Defender
for Defendant-Appellant.

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City & County of Honolulu
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge