

NO. 27179

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MICHAEL N. VILLEGAS, Defendant-Appellant,
and
KRISUNTA J. POOLE, Defendant

FILED
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C. J. RIVARDO
CLERK APPELLATE COURTS
STATE OF HAWAII

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-1525)

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Foley and Nakamura, JJ.)

Defendant-Appellant Michael N. Villegas (Villegas) appeals from the Judgment of Conviction and Probation entered on March 9, 2005 in the Circuit Court of the First Circuit^{1/} (circuit court). Villegas pled guilty to Place to Keep Pistol or Revolver, in violation of Hawaii Revised Statutes (HRS) § 134-6(c) (Supp. 2005). The circuit court sentenced Villegas to five years of probation and ordered him to pay a \$100 crime victim compensation fee.

On appeal, Villegas argues:

(1) The circuit court erred by denying his October 1, 2003, Motion to Suppress Items of Evidence^{2/} (Motion to Suppress) because the State failed to prove that the police search fell within a valid exception to the requirement that searches be performed pursuant to a search warrant.

^{1/} The Honorable Michael A. Town presided.

^{2/} The Honorable Michael D. Wilson presided.

(2) The circuit court erred when it concluded that the police officers were justified in removing Villegas from the vehicle because the State failed to present any evidence to show that the officers believed Villegas was engaged in criminal activity.

(3) In ruling on the Motion to Suppress, the circuit court erred, both orally and in its December 18, 2003 "Findings of Fact and Conclusions of Law and Order Denying Defendants' [sic] Motion to Suppress Evidence," in four of its factual findings and in one of its conclusions of law:

(a) November 26, 2003 oral finding that "there is corroborating testimony by the police officers as to the actions of [Villegas]."

(b) December 18, 2003 Finding of Fact 6 that "Villegas kept reaching towards the left side of his body away from the view of Officers Lee and Hew."

(c) December 18, 2003 Findings of Fact 7 that "Officer Lee began to become suspicious and fearful that [Villegas] may be reaching for a firearm."

(d) November 26, 2003 oral finding that "there developed a legitimate concern on the part of the police officers that justified taking the action of removing Mr. Villegas from the vehicle and subjecting him to a search for a weapon."

(e) December 18, 2003, Conclusion of Law 2 that "Officer Lee was further warranted in removing [Villegas] from the rear seat of the Honda" and that "[f]rom [Villegas'] conduct

one could reasonably infer that [Villegas] was either trying to hide a firearm or reach for a firearm."

(4) Assuming that the State met its burden of proof for the investigatory stop exception to the warrant requirement, the circuit court erred when it denied Villegas's Motion to Suppress because the police officers exceeded the permissible scope of investigatory stops and searches.

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 as raised by the parties, we hold:

(1) The police officers were justified in detaining Villegas and the other occupants of the vehicle without a warrant because the officers reasonably believed the occupants were involved in criminal activity. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); State v. Trainor, 83 Hawai'i 250, 257-58, 925 P.2d 818, 825-26 (1996). The officers indicated "specific and articulable facts" justifying such an intrusion. State v. Bohannon, 102 Hawai'i 228, 237, 74 P.3d 980, 989 (2003); State v. Ugalino, 107 Hawai'i 144, 150, 111 P.3d 39, 45 (2005). The officers observed an invalid safety inspection sticker on the vehicle and were informed that the plates on the vehicle appeared to be fraudulent (in violation of HRS §§ 286-25 (1993) and 249-11 (Supp. 2001), respectively). The observation of the fraudulent plates also gave rise to a reasonable belief that the occupants were engaged in Unauthorized Control of Propelled Vehicle,

pursuant to HRS § 708-836 (Supp. 2005). Whether Villegas was in the front seat or the rear seat of the vehicle is immaterial, as the officers could have reasonably believed that Villegas was engaged in criminal activity -- if not as the actual perpetrator of the car theft, then as an accomplice.^{3/}

(2) The police officers reasonably believed that Villegas posed a threat of danger when they frisked him.

Ugalino, 107 Hawai'i at 151, 111 P.3d at 46. An officer can reasonably conclude he is in danger in a situation where he is detaining an apparently stolen vehicle and where one of the vehicle's occupants refuses to comply with the officer's reasonable warnings to remain calm and keep his hands in view.

(3) The circuit court's factual findings were not clearly erroneous. The court did not err by finding that the testimony of Officers Lee and Jang corroborated each other -- the record supports this finding in numerous respects.^{4/} Villegas' challenge to the relevance of Officer Jang's testimony also fails. Officer Jang was a percipient witness to the events giving rise to the search and seizure, and therefore his testimony was relevant.

^{3/} Hawaii Revised Statutes § 702-221(2)(c) (1993) states that, "[a] person is legally accountable for the conduct of another person when . . . [h]e is an accomplice of such other person in the commission of the offense."

^{4/} The police officers each described Villegas' furtive movements. Officer Lee, for example, stated that "[a]t one point he quickly canted his body to the left away from me, and with his left hand, he began reaching down the side of his body." Officer Jang testified that he and Officer Lee warned Villegas several times to keep still and let the officers see his hands, but Villegas did not comply with his or Officer Lee's instructions and "moved quite a bit" and did not appear to be complying with the order to keep his hands visible.

The circuit court did not clearly err by finding that "Villegas kept reaching towards the left side of his body away from the view of Officers Lee and Hew." The testimonies of Officers Lee and Jang was that Officers Lee and Hew were on the same side of the vehicle; therefore, the circuit court's finding that Villegas "kept reaching" away from Officers Lee and Hew was not clearly erroneous.

The circuit court did not plainly err by finding that Officer Lee became "suspicious and fearful that [Villegas] may be reaching for a firearm." The circuit court found the officers' testimonies to be more credible than that of Villegas. Determinations of credibility are the province of the circuit court judge, who heard the matter and is best situated to evaluate the credibility of the witnesses, and, thus, this court will not reverse a credibility determination unless this court is left with a definite and firm conviction that a mistake has been made. State v. Balberdi, 90 Hawai'i 16, 20-21, 975 P.2d 773, 777-78 (App. 1999).

The circuit court did not clearly err when it (a) found that the officers were legitimately concerned for their safety and (b) concluded that from Villegas' conduct, one could reasonably infer that either Villegas was trying to hide a firearm or reaching for a firearm, such that removing Villegas

from the vehicle and searching him was justified. The record supports this finding and conclusion.^{5/}

(4) The police officers did not exceed the permissible scope of any investigatory stop, search, or seizure when they removed Villegas from the vehicle, subdued him, and recovered the weapon from him because the officers reasonably believed that Villegas was armed and presently dangerous. State v. Melear, 63 Haw. 488, 494, 630 P.2d 619, 624 (1981); State v. Barnes, 58 Haw. 333, 338, 568 P.2d 1207, 1212 (1977). The record reflects Officer Lee's reasonable belief that his safety was in danger as a result of Villegas' engaging in furtive movements.

Therefore,

The Judgment of Conviction and Probation entered on March 9, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 24, 2006.

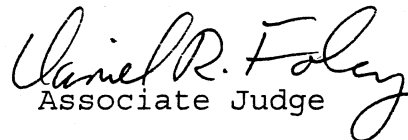
On the briefs:

Cynthia A. Kagiwada
for Defendant-Appellant.

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Presiding Judge



Associate Judge



Associate Judge

^{5/} Officer Lee testified that Villegas at one point "quickly canted his body to the left" away from Officer Lee and appeared to be reaching into his pocket. Officer Lee testified that, as a result of this quick motion, he "believed [Villegas] was possibly reaching for a weapon of some sort."