NO. 27215

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant, v.
ROBERT R. NEAL-ANDERSON, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-2557)

SUMMARY DISPOSITION ORDER
(By: Watanabe, Presiding Judge, Lim and Nakamura, JJ.)

In this unauthorized entry into motor vehicle case,[1] the State of Hawai'i (the State) appeals the June 16, 2005 findings of fact, conclusions of law and order of the Circuit Court of the First Circuit (circuit court)[2] that suppressed evidence against Robert R. Neal-Anderson (Defendant).

After an exhaustive 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 dispose of the State's points of error on appeal as follows:

1. The circuit court was right[3] to suppress Defendant's statement to Officer Chung regarding the number and

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[1] Hawaii Revised Statutes § 708-836.5 (Supp. 2005) provides that "[a] person commits the offense of unauthorized entry into motor vehicle if the person intentionally or knowingly enters or remains unlawfully in a motor vehicle with the intent to commit a crime against a person or against property rights."

[2] The Honorable Virginia Lea Crandall presided.

[3] See State v. Jenkins, 93 Hawai'i 87, 100, 997 P.2d 13, 26 (2000) ("[w]e review the circuit court's ruling on a motion to suppress *de novo* to determine whether the ruling was 'right' or 'wrong'" (citation and some internal quotation marks omitted)).

description of the cell phone left behind in the vehicle. Given the circuit court's findings that key parts of Officer Chung's testimony were not credible, State v. Kekona, 77 Hawaiʻi 403, 406, 886 P.2d 740, 743 (1994) ("it is for the trial court to assess the credibility of witnesses" (citation omitted)), "an objective assessment of the totality of the circumstances reflects . . . that the point of arrest ha[d] arrived because . . . probable cause to arrest ha[d] developed[,]" State v. Wallace, 105 Hawaiʻi 131, 140, 94 P.3d 1275, 1284 (2004) (citation and block quote format omitted), such that said statement was made while Defendant was under custodial interrogation without benefit of Miranda warnings and was therefore correctly suppressed. Id.

2. The circuit court was right to suppress the subsequent statement Defendant made to Officer Chung. Given the circuit court's prerogative to "draw all reasonable and legitimate inferences and deductions from the evidence adduced," Kekona, 77 Hawaiʻi at 406, 886 P.2d at 743 (citation omitted), said statement "immediately followed, and was part of the same conversation that started with [Officer] Chung asking Defendant to verify his telephone number." Finding of Fact 32. Accordingly, said statement was made while Defendant was under custodial interrogation without benefit of Miranda warnings and was therefore correctly suppressed. Wallace, 105 Hawaiʻi at 140, 94 P.3d at 1284.

3. Findings of Fact 26 and 32 are not clearly erroneous. State v. Walker, 106 Hawai'i 1, 9, 100 P.3d 595, 603 (2004) ("review of factual determinations made by the trial court deciding pretrial motions in a criminal case is governed by the clearly erroneous standard" (citation and block quote format omitted)). Conclusions of Law 5 and 11 are not wrong. State v. Ketchum, 97 Hawai'i 107, 115, 34 P.3d 1006, 1014 (2001) (this court reviews "conclusions of constitutional law . . . *de novo* on appeal, under the 'right/wrong' standard" (citation omitted)).

Therefore,

IT IS HEREBY ORDERED that the June 16, 2005 findings of fact, conclusions of law and order of the circuit court are affirmed.

DATED: Honolulu, Hawai'i, November 30, 2006.

Corinne K.A. Watanabe
Presiding Judge

Associate Judge

Craig H. Nakamura
Associate Judge

On the briefs:

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellant.

Karen T. Nakasone,
Deputy Public Defender,
for Defendant-Appellee.