

NO. 27711

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
CHRISTIAN BRADLEY DIAS, Defendant-Appellant

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APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(Cr. No. 05-1-0083)

MEMORANDUM OPINION

(By: Watanabe, Presiding J., Nakamura, and Fujise, JJ.)

In this appeal, Defendant-Appellant Christian Bradley Dias (Dias or Defendant) contends that a glass pipe containing crystal methamphetamine residue, which was recovered from his shorts pocket during a pat-down search following a traffic stop, should have been suppressed as a fruit of an unlawful search of a fanny pack on the front passenger seat of the truck he was driving.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the oral arguments of the parties and the case law and statutes relevant to the arguments advanced and the issues raised, we disagree. We therefore affirm the judgment entered by the Circuit Court of the Second Circuit (the circuit court)<sup>1</sup> on December 14, 2005 convicting and sentencing Dias for Promoting a Dangerous Drug in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2006),<sup>2</sup> engaging in

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<sup>1</sup> The Honorable Shackley F. Raffetto presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2006) provides, as it did when Defendant-Appellant Christian Bradley Dias (Dias) was charged, as follows:

Promoting a dangerous drug in the third degree.

(continued...)

Prohibited Acts Related to Drug Paraphernalia, in violation of HRS § 329-43.5 (1993),<sup>3</sup> and Driving without a License (DWOL), in violation of HRS § 286-102 (Supp. 2004).<sup>4</sup>

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<sup>2</sup>(...continued)

(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.

(2) Promoting a dangerous drug in the third degree is a class C felony.

<sup>3</sup> The relevant part of HRS § 329-43.5 (1993) provides:

**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.

<sup>4</sup> At the time Dias was indicted, HRS § 286-102 (Supp. 2004) provided, in relevant part, as follows:

**Licensing.** (a) No person, except one exempted under section 286-105, one who holds an instruction permit under section 286-110, one who holds a commercial driver's license issued under section 286-239, or a commercial driver's license instruction permit issued under section 286-236, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

- (1) Mopeds;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less; and
- (4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of fifteen thousand one through twenty-six thousand pounds.

BACKGROUND

On February 22, 2005, a grand jury returned an indictment charging Dias with committing the following offenses on or about January 18, 2005: Count 1 - Promoting a Dangerous Drug in the Third Degree; Count 2 - Prohibited Acts Related to Drug Paraphernalia; Count 3 - DWOL; Count 4 - Noncompliance with Speed Limit, in violation of HRS § 291C-102(b) (Supp. 2004); and Count 5 - Unsworn Falsification to Authorities, in violation of HRS § 710-1063 (1993).

A. The Motion to Suppress

On March 30, 2005, Dias filed a motion to suppress the following:

1. 3 clear plastic bags containing crystal methamphetamine, 3 other bags, and one clear plastic straw seized without warrant from inside [Dias's] fanny pack by Officer Kaneshiro on 1/18/05 at 2330 hours along the Honoapiilani [sic] Highway.
2. 1 glass pipe with bulbous end seized from [Dias's] pocket after arrest for items seized in fanny pack, as fruit of poisonous tree.

The sole witness at the July 7, 2005 hearing on Dias's motion to suppress was Maui Police Department (MPD) Officer Jonathan Kaneshiro (Officer Kaneshiro). Officer Kaneshiro testified that on January 18, 2005, he was in his parked patrol car monitoring traffic along Honoapiilani Highway. The posted speed limit on that stretch of road was forty miles per hour. At approximately 11:00 p.m., Officer Kaneshiro saw a white Ford Ranger truck pass him at a high rate of speed. Using an LTI 20-20 laser speed gun, Officer Kaneshiro clocked the truck traveling at fifty-eight miles per hour.

Officer Kaneshiro then pursued the truck in his patrol car and noticed that the truck's tax and safety decals had expired. At that point, Officer Kaneshiro activated the blue emergency lights of his patrol car, and the truck pulled over to the side of the road. After parking his patrol car behind the

truck, Officer Kaneshiro walked up to the driver's side of the truck and saw that the driver was its sole occupant.

Officer Kaneshiro testified that he informed the driver why he had been stopped and requested the driver's license, registration, and proof of insurance. The driver responded that he did not have any kind of license or identification with him and did not know the location of the truck's paperwork because he had borrowed the truck from a friend. After further questioning by Officer Kaneshiro, the driver stated that his name was "Kawika Silva" and repeated that he did not have a valid driver's license. Officer Kaneshiro then checked with police dispatch and confirmed that there was no driver's license or outstanding warrants under the name "Kawika Silva[.]"

Officer Kaneshiro further testified about his interaction with the driver, as follows:

Q. When you had contact with the defendant, Officer Kaneshiro, could you describe his physical conduct or his demeanor at that time?

A. As I was asking him questions, part of our training for officer safety is to scan the interior of the vehicle to see if there's weapons. As I was doing so, the defendant kept shifting and moving. It appeared that he was trying to block wherever I was looking. The defendant initially didn't make eye contact. When I asked him a question he would start to look up and immediately look down again.

Q. And did you -- after you ran the license check and the warrant check through police dispatch, did you approach the defendant a second time?

A. Yes.

Q. And did you, based on his conduct, ask him any questions for your safety?

A. Yes, I did.

Q. What did you ask him?

A. I asked him if there were any weapons in the truck I should be aware of.

Q. And did you get a response?

A. Yes. Defendant told me that there were no weapons in the car. That I could check if I wanted.

Q. Now Officer, being that there was no indication of any driver's license under Kawika Silva, did you ask the defendant to step out of the white Ford Ranger at that time?

A. Yes.

Q. And did the defendant comply with that request, to step out of the truck?

A. Yes, he did.

Once out of the truck, the driver stepped to the front of the patrol car at Officer Kaneshiro's request. Officer Kaneshiro then placed MPD Form 103, which is used to advise a person of his or her constitutional rights, on the front hood of the patrol car and asked the driver if he was able to read and understand the English language. When the driver responded affirmatively, Officer Kaneshiro read the form to the driver line by line and after reading each line, asked the driver to initial at the end of the line to indicate that he understood what had been read to him.

Officer Kaneshiro testified that the driver initialed "CS" on the first two lines of MPD Form 103, then "caught himself" and wrote "KS" on the third and remaining lines of the form. Officer Kaneshiro also testified that the driver signed the form with the name "Kawika Silva" "very slow[ly] and deliberate[ly,]" which was unusual because "[p]eople normally do signatures very quickly without thinking about it. It seemed like he was going letter by letter signing it." The driver then filled out and signed as "Kawika Silva" a "Consent to Search" form, MPD Form 113, thereby authorizing MPD officers "to conduct a complete search" of the truck. The driver was not then handcuffed or otherwise restrained.

In the meantime, MPD Officer Clement Antonio (Officer Antonio) had arrived at the scene, witnessed the signing of the two forms by the driver, and assisted Officer Kaneshiro in searching the truck. Officer Kaneshiro recovered a fanny pack "between the two seats right in front of the arm rest" of the truck. Based on the driver's consent to search the truck, the officers opened the fanny pack and found inside its front pocket, a large clear plastic bag containing three packets of crystal methamphetamine, another bag with residue, and a cut straw. The

fanny pack also contained a State of Hawai'i identification (ID) card for a "Christian Dias[,]" which had a photograph resembling the driver.

Officer Kaneshiro informed the driver of what had been found and told him that he was being placed under arrest. Officer Kaneshiro did not explain at the hearing what the driver was arrested for; however, his written arrest report attached as Exhibit B to the motion to suppress stated that "[t]he male operator of the vehicle was informed he was being placed under arrest for the offenses of PROMOTING A DANGEROUS DRUG III, PROHIBITED ACTS RELATING TO DRUG PARAPHERNALIA and [DWOL]." The driver, upon questioning by Officer Kaneshiro, then admitted that he was the Christian Dias whose photograph was on the ID. At that point, Officer Kaneshiro conducted a search incident to Dias's arrest and found a glass pipe with a bulbous end containing residue resembling crystal methamphetamine in Dias's front pants pocket.

Dias was taken to the Lāhainā police station, where Officer Kaneshiro, using MPD Forms 103 and 113, readvised Dias of his constitutional rights and obtained Dias's written consent to search the truck. Officer Kaneshiro first explained to Dias, however, that "when we went through it the first time he had put a fake name, Kawika Silva. . . . [W]e're going to go through it again with his correct name." Dias initialed "CD" on the forms and signed his name as "Christian Dias[.]" Officer Kaneshiro then contacted police dispatch to run a driver's license check on Dias and learned that due to an administrative revocation, Dias's license had expired.

On cross-examination, Officer Kaneshiro testified that after pulling the truck over, he scanned its interior with a xenon flashlight. As he moved the flashlight to any area below the driver's chest, the driver "would move his body to block it,

shuffling feet, moving his arms and body." Additionally, the driver would look up and look down while being questioned, raising the officer's suspicions about whether the driver had furnished a fake name:

[T]he way he is doing when he was giving information I would talk to him, he would look up normal, and when he was giving the information he would look down. That's one of the signs we look for that sometimes people are not being truthful.

The fact that he couldn't produce anything with his name on, I asked if he had a library card or Safeway card, anything like that, and along with the information we had no records of that party that matched which was leading me to believe it was not the true name of this party.

At that point, although he had ascertained that the driver was not licensed, Officer Kaneshiro "hadn't decided if [he] would specifically arrest" the driver for DWOL. Additionally, the officer admitted that his flashlight scan of the truck's interior revealed nothing that remotely looked like a weapon, holsters, guns, ammunition, or knives. However, he also testified:

I knew there was something in the pickup that [the driver] didn't want me to find because of his actions. I suspected it could be a weapon, could be something else illegal. I wasn't exactly sure what it was.

Officer Kaneshiro denied, however, that he had delayed formally arresting the driver for DWOL and speeding in order to conduct a search of the truck.

On July 20, 2005, the circuit court issued its decision granting in part and denying in part Dias's motion to suppress. The circuit court determined that Dias was properly stopped for speeding and properly requested to produce a "driver's license and registration pursuant to [HRS] § 286-116(a)." At that point, the circuit court concluded, "Officer Kaneshiro had probable cause to take Defendant into custody for [DWOL]." The circuit court also determined, however, that

[e]ven though the initial stop of [Dias] was proper, the court must examine whether the subsequent search and seizure was proper. State v. Melear, 63 Haw. 488, 494, 630 P.2d

619, 624 (1981)[. After Officer Kaneshiro had probable cause to arrest, the investigatory nature of the encounter ended. Given the totality of the circumstances, Officer Kaneshiro failed to point to specific and articulable facts, which, taken together with rational inferences from the facts, indicate to a prudent and cautious person that further criminal activity was afoot. State v. Melear, 63 Haw. 488, 630 P.2d 619 (1981). Taken objectively, a person of reasonable caution would not be warranted in believing that further criminal activity was afoot simply because, as Officer Kaneshiro testified, Defendant seemed nervous, failed to make eye contact, and appeared to shift his body.

[Dias] was seized within the meaning of article I, section 7 of the Hawaii Constitution when he stated that he did not have a license and was escorted by Officer Kaneshiro to his patrol car, where they were joined by a second officer, Officer Antonio. In this case, despite signing a consent form, a reasonable person in [Dias's] position would not have believed that he was free to ignore the officer's inquiries and walk away. State v. Quino, 74 Haw. 161, 173, 840 P.2d 358, 364 (1992). Under the circumstances, it cannot be said that [Dias] freely, voluntarily, and intelligently gave officers consent to search his entire vehicle and all closed containers therein for weapons. Therefore, evidence recovered in the illegal search of [Dias's] vehicle must be suppressed.

Accordingly, the circuit court granted Dias's motion to suppress the items seized from the fanny pack in Dias's truck.<sup>5</sup>

The circuit court also concluded that because Officer Kaneshiro had probable cause to arrest Dias for DWOL when Dias informed the officer that he did not have a license, the patdown of Dias's person pursuant to his arrest was proper. The circuit court further decided that

[n]otwithstanding the lawful pat-down [sic], discovery and seizure of evidence recovered from [Dias's] person would inevitably have been discovered by lawful means under the inevitable discovery rule when he was transported to the

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<sup>5</sup>The police had probable cause to arrest Dias for Driving Without a License when they sought his consent to search. In relying on State v. Melear, 63 Haw. 488, 630 P.2d 619 (1981) and State v. Quino, 74 Haw. 161, 840 P.2d 358 (1992), cases addressing the validity of investigatory stops, to suppress the contents of Dias's fanny pack, the circuit court appears to have applied the wrong standard to evaluate the validity of Dias's consent to search. However, Plaintiff-Appellee State of Hawai'i did not appeal that part of the Decision entered by the Circuit Court of the Second Circuit (the circuit court) on July 20, 2005, or the part of the Findings of Fact and Conclusions of Law entered on July 28, 2005, that granted Dias's motion to suppress. Therefore, we decline to examine sua sponte the validity of the search of the fanny pack.



Maui Police Department and subjected to an inventory search of his person. State v. Kaluna, 55 Haw. 361, 520 P.2d 51 (1974). Therefore, evidence recovered from [Dias's] person will not be suppressed.

On July 28, 2005, the circuit court issued Findings of Fact and Conclusions of Law consistent with its July 20, 2005 Decision.

On August 2, 2005, the circuit court entered its order granting in part and denying in part Dias's motion to suppress.

Prior to the commencement of the jury trial on October 10, 2005, the circuit court granted the oral motion of Plaintiff-Appellee State of Hawai'i (the State) to dismiss with prejudice Counts 4 and 5 of the indictment.

B. The Trial Testimony

At trial, Officer Kaneshiro's testimony regarding Dias's arrest was similar to his testimony at the suppression hearing, except that he also explained that: (1) the driver was initially stopped for speeding, expired tax, and expired safety check; (2) based on the result of the license check and the cooperation of the driver up to that point, he asked the driver to exit the truck; (3) the driver was placed under arrest for DWOL; and (4) the officer recognized that the driver was Dias before placing Dias under arrest.

Regarding the pat-down search incident to Dias's arrest, Officer Kaneshiro testified in part as follows:

Q Could you tell the Ladies and Gentlemen of the Jury what you found within the front right pocket of the defendant at that time?

A There was a glass pipe with bulbous end, had residue resembling that of crystal methamphetamine on the inside.

Q And before you removed that item, did you recognize what that was when you felt it?

A I had a pretty good idea what it was.

Q And what was the basis for your idea or your pretty good idea of what that item was, when you felt it?

A Past experience.

Q After you felt that item, what happened next, Officer?

A I asked what it was in his pocket. I believe I got no reply at that point. I removed the item and discovered it was in fact a glass pipe with bulbous end with a residue resembling that of crystal methamphetamine.

Officer Kaneshiro explained that after he had completed his pat-down search and placed the glass pipe in a bag, he took the driver back to the Lāhainā police station for processing. After being asked what "processing" entailed, Officer Kaneshiro stated:

A Basically, photographing, fingerprints, beginning of the arrest report.

Q Is there also, pursuant to your procedure, another search of pockets at that time?

A Yes.

Q And do you recall whether or not that was done in this case?

A Prior -- before the defendant was placed into the cell, a patdown [sic] search was conducted.

Q A second patdown [sic] search at the Lahaina Police Station?

A Yes.

On cross-examination, Officer Kaneshiro related that the pipe was not visible as a bulge before the patdown, but upon patting it down, he "was like 99 percent sure it was a pipe." He found no weapons on Dias's person. Officer Kaneshiro was asked what his pat-down protocol would have been if he had discovered coins in Dias's pocket, and he testified as follows:

Q The search that you did out on the highway, would you have seized coins if there had been coins in the pocket?

A Depending on how many there were, maybe yes, maybe no. Sometimes I will take it out, make sure it's just coins or something else, and, because it's money, leave it in the defendant's custody. Once we get to the station, take it out of his pocket at that time. Especially a lot of loose change, depending on whether there's a convenient bag handy at that time. A lot of times, I will just go ahead and leave it in their pocket.

Three witnesses testified next: Sergeant Ricky Uedoi, the MPD evidence custodian; Michael Mudrick, an MPD civil evidence custodian; and Julie Wood, an MPD criminalist. Their testimonies established the chain of custody for the glass pipe and residue and that the residue, upon chemical testing, was

determined to weigh 0.165 grams and contain methamphetamine. The State then rested.

The sole witness called by the defense was Officer Antonio. He testified that his role on the day Dias was arrested was to back up Officer Kaneshiro for safety reasons. Officer Antonio was asked about the search of Dias's person after Dias left the truck:

Q So did you then get to oversee the search of [Dias's] person once he was out and standing in front of [Officer] Kaneshiro's patrol car?

A Yes.

Q Okay. Can you describe for the jury, please, what kind of search that was?

A After [Dias] was taken into custody, a basic patdown [sic] search was conducted to make sure he doesn't have any contraband or weapons on him.

Q Now, is there a difference between a patdown [sic] and a full search?

A If he is taken into custody, a full search is conducted. I mean, everything is taken out of his pockets and whatnot. If it was just a patdown, it was just more for weapons, more for safety issue.

Q So patdown would be this looking for possible weapons or instrumentalities of escape, correct? Is that right?

A Correct.

Q But if it's a full search, that would be actually emptying everything out and even wanting to do an inventory of what is there, correct?

A Correct.

On cross-examination, Officer Antonio was queried about the nature of a pat-down search:

Q Now, Officer Antonio, counsel asked you questions about patdown [sic] search. And I think you indicated it was for weapons or potential weapons; is that right?

A Yes, sir.

Q In your experience, anything made out glass, is that a potential weapon, if that is in someone's possession?

A Yes, it is.

Q Why is that, Officer?

A Break off one end, you can use it to stab somebody.

The jury found Dias guilty on all three counts for which he was tried. Pursuant to a judgment entered on December 14, 2005, Dias was sentenced to five years' imprisonment

for Counts 1 and 2, both sentences to run concurrently and consecutive to the sentence of one year of imprisonment imposed for Count 3. Dias was also sentenced to pay a crime victim compensation fee of \$265.00; provide buccal swab samples, print or hand impressions, and/or blood specimens for law enforcement identification analysis; and pay a monetary assessment of \$500.00 or the actual cost of Deoxyribonucleic Acid (DNA) analysis, whichever is less, to the DNA registry special fund.

This appeal followed.

#### DISCUSSION

Dias argues that because Officer Kaneshiro did not confirm that Dias did not have a valid driver's license until after Dias had been arrested and transported to the Lāhainā police station, no probable cause existed for his DWOL arrest. Dias also maintains that the patdown of his person was incident to an invalid arrest and therefore, the glass pipe and residue found in his pocket should have been suppressed and would not have been inevitably discovered.

##### A. Whether Probable Cause Existed for Dias's Arrest

Pursuant to HRS § 803-5 (1993), an objective standard is applied to determine whether probable cause exists for an arrest:

**By police officer without warrant.** (a) A police officer or other officer of justice, may, without warrant, arrest and detain for examination any person when the officer has probable cause to believe that such person has committed any offense, whether in the officer's presence or otherwise.

(b) For purposes of this section, a police officer has probable cause to make an arrest when the facts and circumstances within the officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that a crime has been or is being committed.

Construing the foregoing statute, the Hawai'i Supreme Court recently noted:

As the language of the statute indicates, the existence of probable cause for a warrantless arrest is determined based on the facts and circumstances as known to a reasonable police officer at the time of the arrest. See *State v. Servantes*, 72 Haw. 35, 39, 804 P.2d 1347, 1349 (1991) (evaluating probable cause at the time of the defendant's arrest). See also *Valente v. Wallace*, 332 F.3d 30, 32 (1st Cir. 2003) (The probable cause test is objective and turns on what a reasonable police officer would conclude based on the evidence actually available at the time (and not on unknown facts or subsequent events). . . .)

State v. Kido, 109 Hawai'i 458, 462, 128 P.3d 340, 344 (2006) (brackets and internal quotation marks omitted).

The Hawai'i Supreme Court has also explained that

[p]robable cause exists when the facts and circumstances within one's knowledge and of which one has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed. *This requires more than a mere suspicion but less than a certainty.*

State v. Maganis, 109 Hawai'i 84, 86, 123 P.3d 679, 681 (2005) (internal quotation marks omitted).

Here, Officer Kaneshiro personally observed Dias operating a motor vehicle prior to stopping him for speeding. Dias, claiming to be "Kawika Silva[,] " admitted to the officer that he did not have a driver's license. At the time of Dias's arrest, HRS § 286-102(a) (Supp. 2004) provided that except in certain circumstances not relevant to Dias, "[n]o person, . . . shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles."<sup>6</sup>

Under this objective standard, Officer Kaneshiro's observations and Dias's admission warranted a reasonable police

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<sup>6</sup> HRS § 286-136 (Supp. 2006) currently provides, as it did when Dias was arrested, that "any person who violates [HRS §] 286-102 . . . shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both." Since the offense is punishable by imprisonment, it constitutes a crime. HRS § 701-107(1) (1993).

officer to conclude that the offense of DWOL had been committed and that probable cause existed to arrest Dias for DWOL.

B. Whether Dias's Arrest for DWOL and the Pat-down Search Incident to the Arrest Were Tainted by the Unlawful Search of the Fanny Pack

Officer Kaneshiro candidly testified that he had not decided whether to physically arrest "Kawika Silva" or issue a citation upon ascertaining that "Kawika Silva" had no driver's license. Dias maintains that Officer Kaneshiro's "indecision regarding arrest versus citation essentially constituted a decision not to arrest for the DWOL." Since the pat-down search of his person did not occur until after the discovery of contraband in the fanny pack, Dias contends that the search was incident to the "arrest for the illegally discovered" contraband in the fanny pack and not incident to the arrest for DWOL. Therefore, Dias argues, the evidence of the glass pipe and residue recovered during the pat-down search must be suppressed as fruit of the poisonous tree. We disagree.

According to the Hawai'i Supreme Court,

[t]he fruit of the poisonous tree doctrine prohibits the use of evidence at trial which comes to light as a result of the exploitation of a previous illegal act of the police. Under the fruit of the poisonous tree doctrine,

admissibility is determined by ascertaining whether the evidence objected to as being '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. Where the government proves that the evidence was discovered through information from an independent source or where 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.

In other words, the ultimate question that the fruit of the poisonous tree doctrine poses is as follows: Disregarding the prior illegality, would the police nevertheless have discovered the evidence?

State v. Poaipuni, 98 Hawai'i 387, 392-93, 49 P.3d 353, 358-59 (2002) (citations, brackets, ellipses, and most internal quotation marks omitted).

On the record before us, we cannot conclude that Dias's arrest for DWOL and the subsequent pat-down search of his person resulted from any exploitation of the search of the fanny pack.

In declining to suppress the glass pipe with residue, the circuit court implicitly found that Officer Kaneshiro would have arrested Dias for DWOL even if the fanny pack had not been searched. Without such a finding, there would be no basis for the court to conclude that the glass pipe with residue would inevitably have been discovered by a lawful means.

That Officer Kaneshiro would have arrested Dias independent of the search of the fanny pack is supported by the record. The record indicates that when Officer Kaneshiro initially approached the driver to ask for various documents, the driver's actions raised a red flag regarding the driver's identity. Although the driver stated that he was "Kawika Silva[,] " he had no identification on him, claimed that the truck was not his but was borrowed from a friend, and would not look the officer in the eye when answering questions. After admitting that he had no driver's license, "Kawika Silva" then initialed "CS" on the first two lines of an MPD advisement-of-constitutional rights form before catching himself and initialing "KS" on subsequent lines. Additionally, the driver signed "Kawika Silva" slowly and deliberately, contradicting common experience. These circumstances would certainly raise the suspicions of any reasonable police officer that the driver was being untruthful about his identity, making an arrest the only prudent course to take so that the driver's identity could be verified. It would make no sense for Officer Kaneshiro to have issued a citation for DWOL to the driver in the name of "Kawika

Silva" when the officer suspected that the driver had given him a false name.

When police dispatch confirmed that "Kawika Silva" had no driver's license, Officer Kaneshiro ordered "Kawika Silva" to step out of the truck, the first step in effectuating a custodial arrest. Officer Kaneshiro independently verified that the driver of the vehicle did not possess a driver's license. As an unlicensed driver, "Kawika Silva" was "unfit to drive" and was required to be removed from the road for the protection of the public. State v. Vallesteros, 84 Hawai'i 295, 304, 933 P.2d 632, 641 (1997). This is another reason why Officer Kaneshiro would have arrested the driver rather than citing him for DWOL.

Although the circuit court suppressed the contents of the fanny pack, the discovery of the glass pipe and residue flowed from an arrest based on an earlier admission and independent confirmation that the driver of the truck was not licensed. Moreover, whether the driver was "Kawika Silva" or "Christian Dias" would have been sorted out during the booking process at the police station. Therefore, Dias's arrest and search incident thereto were not tainted by the search of the fanny pack.

Affirmed.

DATED: Honolulu, Hawai'i, August 9, 2007.

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