

NO. 28789

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant,
v.
KAAINA SHAYNE HULL, Defendant-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
LIHUE DIVISION
(CASE NO. 5DTA-07-0041)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., and Nakamura, J.;
and Foley, J., dissenting)

Plaintiff-Appellant State of Hawai'i (State) appeals from the "Amended Findings of Fact, Conclusions of Law and Order re Defendant's Motion to Suppress Evidence Due to Lack of Probable Cause for Arrest Filed February 28, 2007" filed on August 29, 2007 in the District Court of the Fifth Circuit, Lihue Division (district court).¹

On appeal, the State argues three points of error:

(1) The district court erred in concluding that Police Officer Steven Vinzant (Officer Vinzant) lacked probable cause to arrest Defendant-Appellee Kaaina Shayne Hull (Hull) for Operating a Vehicle Under the Influence of an Intoxicant (OVI), in light of the following factors: Officer Vinzant (a) observed Hull driving at more than twice the posted speed limit, (b) saw that Hull had red, watery, glassy eyes, (c) smelled an odor of an alcoholic beverage from within Hull's vehicle, (d) saw that Hull was the sole occupant of his vehicle, and (e) testified that Hull refused to take any field sobriety tests.

(2) The district court erred in considering only two (Hull's speeding and his red, watery, glassy eyes) of those five

¹ The Honorable Joseph N. Kobayashi presided.

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factors in reaching its conclusion that there was no probable cause to arrest Hull.

(3) The district court erred in suppressing the fact that Officer Vinzant smelled alcohol coming from Hull's face when Hull exited his vehicle, and the result of Hull's subsequent breath test, in light of the district court's conclusions that (a) Officer Vinzant had reasonable suspicion to order Hull to exit the vehicle and (b) mere seconds after Hull exited his vehicle, Officer Vinzant developed probable cause to arrest Hull for OVI.

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, as well as the relevant statutory and case law, we resolve the State's points of error as follows:

With regard to the first point of error, we review de novo the district court's determination that Officer Vinzant lacked probable cause to arrest Hull. State v. Maganis, 109 Hawai'i 84, 86, 123 P.3d 679, 681 (2005). In Maganis, the Hawai'i Supreme Court noted that:

Probable cause exists when the facts and circumstances within one's knowledge and of which one has reasonable 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.*

Id. (emphasis in original). "[T]he standard for determining probable cause is a practical and nontechnical concept, which involves a balancing of the citizens' right to be free from unreasonable interference with privacy and from unfounded charges of crime, and the needs of the community to be protected by law enforcement[.] Id. at 87, 123 P.3d at 682. "[P]robable cause is generally based upon a combination of factors, which together form a sort of mosaic, of which any one piece by itself often might not be enough to constitute probable cause, but which, when

viewed as a whole, does constitute probable cause." State v. Chong, 52 Haw. 226, 231, 473 P.2d 567, 571 (1970).

When all the circumstances are considered as a whole, we conclude that probable cause existed for Officer Vinzant to arrest Hull when Hull was still in his vehicle. Officer Vinzant observed Hull driving at 54 miles per hour in an area where the posted speed limit was 25 miles per hour, which supports a reasonable inference that Hull's judgment or ability to control his vehicle may have been impaired.² When Officer Vinzant approached Hull's vehicle and spoke with Hull, he observed that Hull's eyes were red, glassy, and watery. Officer Vinzant smelled the odor of alcohol coming from the vehicle and observed that Hull was the only person in the vehicle, which supports a reasonable inference that the odor of alcohol was coming from Hull. Finally, when Officer Vinzant asked if Hull would be willing to take a field sobriety test, Hull refused.³ Hull's refusal to perform the test, when viewed in combination with the other factors, supports an inference of consciousness of guilt on Hull's part. See State v. Ferm, 94 Hawai'i 17, 28, 7 P.3d 193, 204 (App. 2000) ("we reason that because no right of constitutional dimension is implicated by the field sobriety

² Officer Vinzant testified, "Based on my training and experience . . . a high percentage of my DUI or [OVI] arrests were based [sic] probable cause on excess of speeding." When asked, based on his training and experience, what the most common indicator is that first alerts him to a drunk driver, Officer Vinzant responded, "Excessive speed for the posted areas."

³ The record does not indicate that Hull provided any explanation to Officer Vinzant as to why he refused to take the test. Rather, Officer Vinzant testified, "[Hull] said that at that time he didn't want to take any tests." The district court, in the Amended Findings of Fact, Conclusions of Law and Order re Defendant's Motion to Suppress Evidence Due to Lack of Probable Cause for Arrest Filed February 28, 2007, neither rejected nor drew any inferences based upon that refusal. In any event, we review de novo to determine whether the facts and the reasonable inferences arising therefrom establish probable cause. See Maganis, 109 Hawai'i at 89, 123 P.3d at 684 (although the circuit court found there was no probable cause to arrest, "the ICA correctly concluded that Sergeant Yomes had probable cause" based on inferences which "suggested" that defendant had aided and abetted a crime).

test, no fundamental right was chilled by the court in weighing Defendant's refusal against him"); Jones v. Commonwealth, 660 S.E.2d 343, 348 (Va. Ct. App. 2008) ("While the refusal to perform field sobriety tests, the odor of alcohol, [defendant's] glassy-eyed appearance, or his argumentative demeanor -- when taken separately -- may not have provided sufficient probable cause in this case, we conclude that these facts taken as a whole provided the deputy with sufficient probable cause for arrest in this case."); cf. Maganis, 109 Hawai'i at 89, 123 P.3d at 684 ("This evidence, when viewed as a whole, is sufficient to provide more than a mere suspicion (albeit less than a certainty) to a person of reasonable caution that [defendant] committed the offense").⁴

Accordingly, the "Amended Findings of Fact, Conclusions of Law and Order re Defendant's Motion to Suppress Evidence Due to Lack of Probable Cause for Arrest Filed February 28, 2007" filed on August 29, 2007 in the District Court of the Fifth Circuit, Lihue Division, is vacated, and the case is remanded for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, June 27, 2008.

On the briefs:

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai,
for Plaintiff-Appellant.

Melissa N. Lam,
Deputy Public Defender,
for Defendant-Appellee.

Mona Ricketts

Chief Judge

Craig H. Nakamura

Associate Judge

⁴ In view of our disposition of the State's first point of error, we need not reach the remaining two points of error.