

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28787

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KARL J. CRAVALHO, Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2009 FEB 19 AM 7:59

FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CRIMINAL NO. 05-1-0035(2))

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Fujise and Leonard, JJ.)

Defendant-Appellant Karl J. Cravalho (**Cravalho**) appeals from the Judgment of Conviction and Sentence/Notice of Entry, filed on October 8, 2007 in the Circuit Court of the Second Circuit (**Circuit Court**).^{1/} Cravalho was adjudged guilty of Promoting a Dangerous Drug in the Third Degree in violation of Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2004) (**Count 1**), Prohibited Acts Relating to Drug Paraphernalia in violation of HRS § 329-43.5(a) (1993) (**Count 2**), and Promoting a Detrimental Drug in the Third Degree in violation of HRS § 712-1249 (1993) (**Count 3**). Cravalho was sentenced to a five-year term of imprisonment on each of Counts 1 and 2 and a thirty-day term of imprisonment on Count 3. All terms were to run concurrently.

On appeal, Cravalho raises two points of error:

1. The Circuit Court erred when it denied his Motion to Suppress Evidence obtained from execution of a search warrant^{2/} on a residence located at 755 Makaala Drive, Unit #113, Wailuku, Maui, Hawaii (**Makaala Residence**), because the Affidavit

^{1/} The Honorable Shackley F. Raffetto presided.

^{2/} The search warrant was issued by the Honorable Reinette W. Cooper, District Court of the Second Circuit, Wailuku Division.

for Search Warrant did not contain facts sufficient to support probable cause to search the Makaala Residence.

2. The Circuit Court erred when it terminated Cravalho from the Drug Court program without a written motion specifying the grounds for termination.

3. The Circuit Court abused its discretion when it terminated Cravalho from the Drug Court program.

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 resolve Cravalho's points of error as follows:

(1) "Generally, all data necessary to show probable cause for the issuance of a search warrant must be contained within the four corners of a written affidavit under oath." State v. Detroy, 102 Hawai'i 13, 18, 72 P.3d 485, 490 (2003) (citations and quotation marks omitted). The Affidavit in this case did not support a finding of probable cause to search the Makaala Residence. The facts alleged in the affidavit do not state that Cravalho resides there nor do the facts allege any connection between the information provided by the confidential informant and that residence. In the affidavit, there is no nexus stated between the Makaala Residence and/or Cravalho and/or the drugs and/or any drug transaction. There are no alleged facts from which we can infer a connection. Although the Hawaii courts, as well as the federal court have recognized the nexus between a drug dealer and his residence, in each of the cases relied on by the State, there was some connection or nexus stated between the drug dealer, drugs, or drug transaction(s), and the premises to be searched. See, e.g., State v. Woolsey, 71 Haw. 638, 802 P.3d 478 (1990); United States v. Pitts, 6 F.3d 1366 (9th Cir. 1993). There is no nexus in this case and, therefore, probable cause did not exist to search the Makaala Residence.

(2) As to Cravalho's remaining contention, it appears that the State's confession of error is supported by the record and well-founded in law. State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). The Circuit Court erred when it terminated Cravalho's participation in the Drug Court program without written notice of the alleged violations supporting termination prior to the termination hearing. See, e.g., State v. Shannon, 118 Hawai'i, 15, 31, 185 P.3d 200, 216 (2008); People v. Anderson, 385 Ill. App. 1103, 833 N.E.2d 390 (2005); State v. Bani, 97 Hawai'i 285, 293, 36 P.3d 1255, 1263 (2001).

(3) In light of our disposition of Cravalho's first two points of error, we need not address the merits of his contention that the Circuit Court abused its discretion when it terminated Cravalho from the Drug Court program.

For these reasons, we vacate the Circuit Court's Judgment of Conviction and Sentence/Notice of Entry, filed on October 8, 2007, and remand for further proceedings consistent herewith.

DATED: Honolulu, Hawai'i, February 19, 2009.

On the briefs:

Joyce K. Matsumori-Hoshijo
for Defendant-Appellant

Benjamin M. Acob
Prosecuting Attorney
Renee Ishikawa Delizo
Deputy Prosecuting Attorney
County of Maui
for Plaintiff-Appellee



Chief Judge



Associate Judge



Associate Judge