

CONCURRING OPINION BY LEVINSON, J., IN WHICH NAKAYAMA, J. JOINS

Considering the totality of the circumstances reflected in the record on appeal -- including the time of day, the proximity of the defendant-appellant Raymond J. Heapy's vehicle to the Mokulele Highway intoxication checkpoint, the characteristics of Mehameha Loop, and Officer Correa's prior "experience" --, I believe that Officer Correa could reasonably have suspected no more than that Heapy was intentionally attempting to avoid the checkpoint when Officer Correa seized Heapy for constitutional purposes via the use of his "chase car" after observing Heapy's vehicle lawfully execute a right-hand turn onto Mehameha Loop. In my view, the search-and-seizure jurisprudence of this state, grounded in the Hawai'i Constitution, stands squarely for the proposition that the foregoing was insufficient as a matter of law to give rise to reasonable suspicion (much less probable cause) on Officer Correa's part to believe that criminal activity was afoot. That being the case, Officer Correa's seizure of Heapy contravened the protections afforded by article I, section 7 of the Hawai'i Constitution.

Because I would vacate the district court's March 18, 2005 judgment and remand with instructions to grant Heapy's motion to suppress, I concur in the judgment announced by the plurality opinion.

*Stewart Levinson*

*Anna A. Nakayama*