DISSENTING OPINION BY MOON, C.J.

I disagree with the plurality's conclusion that the District Court of the Second Circuit erred in determining that the arresting police officer had reasonable suspicion to effect an investigatory stop based on the police officer's belief that defendant-appellant Raymond J. Heapy was intentionally avoiding an intoxication checkpoint to evade arrest or detection. The plurality's conclusion essentially creates a bright-line rule that, (1) notwithstanding the reasonable inferences drawn from a totality of circumstances, coupled with their training and experience, police officers may never stop vehicles that are believed to be intentionally avoiding a checkpoint because of some involvement in criminal activity and (2) effectively abrogates our state's compelling interests in protecting the safety of the public and combating intoxicated motorists. Moreover, inasmuch as Heapy does not challenge per se the propriety of the police establishing roadblocks under Hawai'i Revised Statutes (HRS) §§ 291E-19 and -20, I would decline to reach the plurality's conclusion that "the 'chase car' police procedure of stopping all vehicles that lawfully turn onto a public way in advance of a checkpoint exceeded that statutorily authorized." Plurality at 2. I, therefore, respectfully dissent.

Preliminarily, I note that Heapy's sole contention on appeal centers on whether the district court erred in denying his motion to suppress evidence (motion to suppress) by determining that Officer Ericlee Correa had reasonable suspicion to effect an investigatory stop based on his belief that Heapy was intentionally avoiding the intoxication checkpoint to evade arrest or detection. Plaintiff-appellee State of Hawai'i (the prosecution) contends that the district court did not err in denying Heapy's motion to suppress inasmuch as "Officer Correa's investigative stop of Heapy was lawful." Specifically, the prosecution asserts that:

> Heapy's turn down Mehameha Loop after passing two large signs which read "INTOXICATION CHECKPOINT AHEAD" initially raised Officer Correa's suspicions. While stationed at his post for nearly two hours, Officer Correa did not see any other vehicle[] other than Heapy's turn down Mehameha Loop. In fact, as Officer Correa testified, Mehameha Loop was blocked off by a metal gate and was not open to through traffic; and the public was not allowed to travel on the adjacent canefield roads. Other than the animal shelter, there was nothing else on Mehameha Loop except canefields. Moreover, although Officer Correa followed Heapy down Mehameha Loop, Officer Correa did not activate his blue lights until after Heapy passed the entrance to the closed animal shelter. Thus, it was even more obvious that Heapy was not going to the closed animal shelter, but instead, as Officer Correa reasonably suspected, was actually attempting to avoid being stopped at the intoxication checkpoint.
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> Thus, all of these facts known to Officer Correa, considered in conjunction with the reasonable inferences arising from the totality of the circumstances, including Officer Correa's training and experience, would warrant a man of reasonable caution in believing that Heapy avoided the intoxication checkpoint due to some type of involvement in criminal activity, i.e., driving under the influence.

(Emphases added.) I agree.

Both article I, section 7 of the Hawai'i Constitution[1] and the fourth amendment to the United States Constitution[2] protect the right of people to be secure in their persons and the right to be free from unreasonable searches and seizures, and article I, section 7 "additionally protects specifically against unreasonable invasions of privacy." State v. Dixon, 83 Hawai'i 13, 21-22, 924 P.2d 181, 189-90 (1996). "The United States Supreme Court has held that[,] when a police officer stops an automobile and detains its occupants, a 'seizure' occurs so as to implicate the fourth and fourteenth amendments to the United States Constitution." State v. Prendergast, 103 Hawai'i 451, 453-54, 83 P.3d 714, 716-17 (2004) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Bolosan, 78 Hawai'i 86, 92, 890 P.2d 673, 679 (1995)) (footnote omitted). This court "presume[s] that a warrantless search or seizure is invalid unless and until the prosecution proves that the search or

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[1] Article I, section 7 of the Hawai'i Constitution provides in relevant part:

> The right of the people to be secure in their persons . . . against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

[2] The fourth amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

seizure falls within a well-recognized and narrowly defined exception to the warrant requirement." Id. at 454, 83 P.3d at 717. One such "well-recognized and narrowly defined exception" is that "a police officer may stop an automobile and detain its occupants if that officer has a 'reasonable suspicion' that the person stopped was engaged in criminal conduct." Id. (citation omitted); see State v. Eleneki, 106 Hawai'i 177, 180, 102 P.3d 1075, 1078 (2004) (same). In other words, "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." State v. Barnes, 58 Haw. 333, 337, 568 P.2d 1207, 1211 (1977) (quoting Terry v. Ohio, 392 U.S. 1, 22 (1968)) (internal quotation marks omitted).

> To justify an investigative stop, short of an arrest based on probable cause, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The ultimate test in these situations must be whether from these facts, measured by an objective standard, a man of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate.

Id. at 338, 568 P.2d at 1211 (internal quotation marks and citations omitted). "To determine whether the officer indeed had specific and articulable facts to justify the investigative stop, [this court] examine[s] the totality of the circumstances measured by an objective standard." Prendergast, 103 Hawai'i at 454, 83 P.3d at 717 (citing United States v. Arvizu, 534 U.S.

266, 273 (2002)) (emphasis added). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." Arvizu, 534 U.S. at 273 (internal quotation marks and citation omitted) (emphasis added); see State v. Binion, 900 S.W.2d 702, 705 (Tenn. Crim. App. 1994) ("In determining whether a police officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances. This includes, but is not limited to, objective observations, information obtained from other police officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. A court must also consider the rational inferences and deductions that a trained police officer may draw from the facts and circumstances known to him." (Format altered.) (Citation omitted.)); Murphy v. Commonwealth, 384 S.E.2d 125, 128 (Va. Ct. App. 1989) ("Courts must apply objective standards in determining whether the requisite degree of suspicion exists, taking into account that trained law enforcement officers may be able to perceive and articulate meaning in given conduct which would be wholly innocent to the untrained observer." (Internal quotation marks and citation omitted.)).

Until today, this court had yet to address whether avoidance of an intoxication checkpoint or roadblock by making a

lawful turn or U-turn to evade arrest or detection creates reasonable suspicion to effect an investigatory stop on a vehicle. Contrary to the plurality's position that "the majority of other jurisdictions have held, based on the facts presented, that it is not permissible to pursue and detain drivers of motor vehicles appearing to legally avoid sobriety checkpoints," plurality at 19, other jurisdictions have made the observation that the case law is "split on whether avoiding a roadblock or checkpoint alone creates sufficient reason for a traffic stop." Oughton v. Dir. of Revenue, 916 S.W.2d 462, 464 n.2 (Mo. Ct. App. 1996) (noting that "[t]he majority position appears to be that such avoidance can provide the sole basis for such a stop") (citations omitted) (emphasis in original); but see People v. Rocket, 594 N.Y.S.2d 568, 570 (N.Y. Justice Ct. 1992) (stating that "it appears that the prevailing view . . . is that the mere making of a U-turn or a turnoff to avoid a[n intoxication] checkpoint is not, in and of itself, [a] sufficient basis for a stop") (citations omitted). Notwithstanding the seemingly contradictory case law, it appears that the majority of jurisdictions utilize or implicitly consider several factors in determining whether an officer had specific and articulable facts to justify an investigatory stop when a motorist executes a lawful turn or U-turn in an apparent attempt to avoid a roadblock to evade arrest or detection. These factors include: (1) the motorist's distance from the roadblock when the turn or U-turn

was made; (2) whether the motorist was able to see the roadblock before he or she took evasive action; (3) the manner in which the motorist operated his or her vehicle in making the evasive action; (4) the arresting officer's experience; and (5) any other circumstances that would indicate the motorist was intentionally avoiding the roadblock to evade arrest or detection. State v. Binion, 900 S.W.2d 702, 706 (Tenn. Crim. App. 1994) (footnote omitted); see State v. Foreman, 527 S.E.2d 921, 923 (N.C. 2000) (stating that, "[a]lthough a legal turn, by itself, is not sufficient to establish a reasonable, articulable suspicion, a legal turn in conjunction with other circumstances, **such as the time, place and manner in which it is made**, may constitute a reasonable, articulable suspicion which could justify an investigatory stop") (some emphases added and some omitted); Pooler v. Motor Vehicles Div., 746 P.2d 716, 718 (Or. Ct. App. 1987) (essentially holding that a legal U-turn before a roadblock does not by itself constitute reasonable suspicion); Commonwealth v. Metz, 602 A.2d 1328, 1335 (Pa. Super. Ct. 1992) (holding that a motorist's avoidance or attempt to avoid a roadblock must be coupled with other articulable facts in order to give officer reasonable suspicion that motorist is in violation of the law or that criminal activity is afoot); Murphy, 384 S.E.2d at 129 (stating that "[f]actors as subtle as the difference between a U-turn 150 feet from a roadblock and a lawful turn into an existing roadway 350 feet from a roadblock may affect the determination"

whether reasonable suspicion exists to justify an investigatory stop).

As to the first factor, relating to the distance from the roadblock, "the rule seems to be the farther away a motorist is from the roadblock, the less objectively reasonable it is to infer that the turn was made out of a consciousness of guilt." United States v. Lester, 148 F. Supp. 2d 597, 603 (D. Md. 2001). See, e.g., Howard v. Voshell, 621 A.2d 804, 805 (Del. Super. Ct. 1992) (holding that there was no reasonable suspicion to stop driver's vehicle simply because she made a lawful U-turn 1,000 feet before a checkpoint); State v. Powell, 591 A.2d 1306, 1308 (Me. 1991) (stating that the court below was not compelled to find that the officer had a reasonable suspicion of criminal activity where motorist turned around as much as 2,100 feet before roadblock); Binion, 900 S.W.2d at 706 (holding that a motorist making a lawful turn 1,000 feet before a roadblock does not give rise to a reasonable suspicion of criminal activity unless the motorist's turn or action is coupled with other articulable facts); State v. Talbot, 792 P.2d 489, 490 & 495 (Utah Ct. App. 1990) (declining to adopt the position that avoiding a roadblock creates an articulable suspicion for a stop where vehicle made an abrupt turn 1,320 feet from roadblock), disapproved on other grounds by State v. Lopez, 873 P.2d 1127 (Utah Ct. App. 1994); Bass v. Commonwealth, 525 S.E.2d 921, 925 (Va. 2000) (holding that there was no reasonable suspicion to

stop motorist's vehicle where he made a legal U-turn about 500 feet from roadblock). "Conversely, the closer a motorist is to a roadblock when he or she turns, the more objectively reasonable it may be to infer the turn was made out of a consciousness of guilt." Lester, 148 F. Supp. 2d at 603. See, e.g., Snyder v. State, 538 N.E.2d 961, 963 & 965-66 (Ind. Ct. App. 1989) (reasonable suspicion of criminal activity existed where turn, in combination with officer's experience, was made about 300 feet from roadblock); Steinbeck v. Commonwealth, 862 S.W.2d 912, 912 & 914 (Ky. Ct. App. 1993) (holding that motorist's turn about 300 feet away from checkpoint, coupled with deputy sheriff's experience in similar instances, the time of day, and nature of the roadway onto which motorist turned, constituted specific, reasonable, and articulable facts which allowed sheriff to draw inference sufficient to form reasonable suspicion that motorist might have been engaging in criminal activity); State v. Thill, 474 N.W.2d 86, 86 & 88 (S.D. 1991) (holding that motorist's turnabout approximately 350 feet away from roadblock and his "subsequent circuitous route" constituted reasonable suspicion that motorist was in violation of the law).

As to the second factor, pertaining to notice of the roadblock, the issue "whether a notice was posted is relevant to the assessment of a driver's scienter or guilt." Lester, 148 F. Supp. 2d at 603. See, e.g., Howard, 621 A.2d at 807 (considering "the lack of an identifiable way for a police officer to

determine whether motorists 1,000 feet away from the checkpoint truly had notice of what lay ahead to be significant" in holding that there was no reasonable and articulable suspicion which justified seizure of defendant and her vehicle); State v. Hester, 584 A.2d 256, 256 & 259-60 (N.J. Super. Ct. App. Div. 1990) (remanded for further findings to determine, inter alia, "what notice was given to motorists of the presence or purpose of the roadblock" where motorist made a U-turn 300 to 400 feet from the roadblock); Talbot, 792 P.2d at 493 n.8 (noting that, although "the evidence supports that defendant perceived official vehicles positioned on the road some distance in front of him, it is far from clear that he recognized those vehicles to be employed in a roadblock as opposed to . . . an accident investigation" in light of the fact that defendant made turn 1,320 feet before roadblock).

As to the third factor, regarding the motorist's manner in operating his or her vehicle, "unsafe, erratic driving is thought to militate towards a finding of reasonable suspicion." Lester, 148 F. Supp. 2d at 604. See, e.g., Foreman, 527 S.E.2d at 922 (officer's observation of driver's "quick left turn" and subsequent "abrupt" turn immediately prior to passing checkpoint's sign giving notice of checkpoint was sufficient to raise reasonable and articulable suspicion to justify stop); Commonwealth v. Eaves, 408 S.E.2d 925, 927 (Va. Ct. App. 1991) (reasonable suspicion arose where motorist made abrupt turn

before a roadblock coupled with officer's four and one-half years of experience of stopping other drivers who had turned to avoid checkpoints and were subsequently found to be in violation of legal regulations).

As to the fourth factor, relating to the arresting officer's experience, other jurisdictions "give weight to an officer's inference based on his experience." Lester, 148 F. Supp. 2d at 604. For example, the Indiana Court of Appeals has stated:

> If police officers stationed at roadblocks were not permitted to stop such [evasive] drivers, the very drivers the police seek to deter could flagrantly avoid the roadblocks and the stops would lose their deterrent value. Trooper Maxwell testified that he had pursued and stopped drivers on numerous occasions who sought to avoid roadblocks and inevitably those drivers had suspended or expired licenses, or some other violation of the law. His experience gave him specific and articulable facts and inferences drawn therefrom to form a reasonable suspicion that [the defendant] was committing a crime. Such might not always be the case when an officer sees a driver avoid a police roadblock. Likewise, a driver who simply turns off the road before entering the roadblock may not give rise to a reasonable suspicion, unless coupled with other articulable facts such as erratic driving or traffic violations. A finding of a reasonable suspicion must be determined on a case by case basis.
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> The alternative is to tell police officers that[,] in spite of their experience, they may not infer from a driver's attempt to avoid a roadblock that the driver is very likely engaged in the commission of a crime. Such a rule would seem to tell police officers to "ignore reality."
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> A rule prohibiting police officers from pursuing drivers who evade roadblocks is unnecessary so long as the officer, by virtue of experience and training, has reasonable and articulable facts upon which his suspicion is based -- not mere hunches or speculation.

Snyder, 538 N.E.2d at 965-66 (citations omitted) (emphasis added); see also Stroud v. Commonwealth, 370 S.E.2d 721, 722-23 (Va. Ct. App. 1988) (holding that officer was justified in

stopping defendant's vehicle in light of his testimony that, based on his eleven years' experience, defendant's action in making a turn 100 to 150 feet away from roadblock indicated that defendant was likely "unlicensed or otherwise in violation of the law").

Finally, as previously stated, any other circumstances that would indicate the motorist was intentionally avoiding a roadblock to evade arrest or detection may be considered in determining whether an officer had reasonable suspicion to effect an investigatory stop on a vehicle. Binion, 900 S.W.2d at 706. For example, in Steinbeck, the defendant was driving his truck from Cairo, Illinois to his home in Ballard County, Kentucky at approximately 3:15 a.m. 862 S.W.2d at 912. Local law enforcement officials had set up an intoxication checkpoint about 300 feet from the Kentucky end of the Cairo Bridge. Id. The police had turned on the emergency lights on their vehicles, making them clearly visible from the Kentucky end of the bridge. Id. As the defendant exited the bridge, he activated his turn signal and made a left-hand turn onto East Cairo Landing Road, an unpaved country road with no visible structures or housing along its route. Id. After observing the defendant turn onto East Cairo Landing Road, Deputy Sheriff Cooper got into his cruiser and followed the defendant. Id. Cooper stopped the defendant's vehicle approximately 225 to 300 feet below the bridge. Id. Cooper subsequently administered two field sobriety tests which

the defendant failed. Id. A "pat down" search also revealed a small vial of cocaine in the defendant's pocket. Id. Consequently, the defendant was charged with driving under the influence and possession of cocaine. Id. The defendant entered a conditional plea, preserving the issue of suppression for appeal. Id.

On appeal, the defendant contended that the trial court erred by failing to suppress the evidence seized inasmuch as the "arresting officer had no articulable and reasonable suspicion that [he] had violated the law prior to the stop." Id. at 912-13. The defendant argued, and it appeared to be conceded by the Commonwealth of Kentucky (the Commonwealth) that "he was not weaving in the roadway, speeding, or in any other way violating a traffic law." Id. at 913. The only ground claimed by Cooper "for the pursuit and stop of [the defendant] was his belief that [the defendant] was attempting to avoid the checkpoint due to intoxication." Id. Although the defendant asserted that "the fact that a car turns in a manner to avoid a roadblock, standing alone, is insufficient to create a reasonable suspicion to justify a stop," id. (citations omitted), the Commonwealth countered "that there were reasons in addition to the mere turning prior to the checkpoint which created an articulable and reasonable suspicion of criminal activity." Id. Specifically, after testifying that he had set up several checkpoints at the same location, Cooper testified that, in his experience as a

deputy sheriff, he has noticed vehicles turning onto East Cairo Landing Road before and that those vehicles turned off onto the road in order to "avoid coming through the road check[.]" Id. Cooper further testified that "every road check [he has] been involved[,] every vehicle that turns there[, i.e., the East Cairo Landing Road,] the driver has been drinking alcohol[.]" Id. In addition to Cooper's past experience, the Commonwealth argued that "the existence of a reasonable suspicion is supported by the uninhabited and unpaved road onto which [the defendant] turned and the early morning hour at which time the incident occurred." Id. The Kentucy Court of Appeals (the court of appeals) agreed with the Commonwealth, holding that the defendant's

> turn away from the sobriety checkpoint, coupled with [Cooper]'s experience in similar instances, the time of day, and the nature of the roadway onto which [the defendant] turned[] constitute specific, reasonable, and articulable facts which allowed the police officer to draw an inference sufficient to form a reasonable suspicion that the driver might have been engaging in criminal activity.

Id. at 914. Moreover, the court of appeals relied on the Indiana Court of Appeal's decision in Snyder for the proposition that the effectiveness of intoxication checkpoints would be reduced if motorists are permitted to avoid them: "If police officers stationed at roadblocks were not permitted to stop such [evading] drivers, the very drivers the police seek to deter could flagrantly avoid the roadblocks and the stops would lose their deterrent value." Id. (citation omitted).

On the other hand, in Murphy, the police were operating a permit and decal checkpoint in the 1800 block of Belt Boulevard in Richmond, Virginia. 384 S.E.2d at 126. Officer Katz, in his capacity as the "chase car," witnessed the defendant driving his truck toward the checkpoint. Id. When the truck was about 350 feet from the checkpoint, the driver made "a normal and legal right turn onto Angela Drive, a dead end street with apartments facing onto it." Id. Katz "acknowledged that nothing distinguished the operation of [the defendant]'s truck from the actions of any driver who simply intended to turn onto Angela Drive." Id. Katz subsequently activated his lights and pursued the turning truck, eventually stopping the truck. Id. When the defendant exited the truck, Katz recognized him as having a suspended operator's license. Id. Upon discovering that the defendant had been adjudged a habitual offender, the defendant was arrested. Id. At trial, Katz testified that, in the four and one-half years he had worked roadblocks, he had pursued about twenty vehicles where the driver apparently attempted to avoid the roadblock. Id. at 127. Katz, however, did not offer any evidence "of how many of those operators had suspended licenses, were habitual offenders, or were involved in criminal wrongdoing." Id. The trial court held that the investigatory stop was lawful, based upon reasonable suspicion of criminal wrongdoing, and found the defendant guilty of driving after having been declared a habitual offender. Id.

On appeal, the Virginia Court of Appeals (the appellate court) reversed, concluding that "the act of a driver in making a lawful right turn 350 feet before a roadblock does not give rise to a reasonable suspicion of criminal activity unless the driver's turn or action is coupled with other articulable facts, such as erratic driving, a traffic violation, or some behavior which independently raises suspicion of criminal activity." Id. at 128 (citations omitted). The appellate court apparently determined that there were no "other articulable facts" from the record and, therefore, reversed the conviction and dismissed the charges. Id. at 128-29. Similarly, in Rocket, the New York Justice Court held that a defendant's lawful right-hand turn onto a road with residences and businesses prior to reaching an intoxication checkpoint, in and of itself, did not provide police with an articulable reason for an investigatory stop. 594 N.Y.S.2d at 569-70.

Considering the totality of the circumstances in the instant case, I believe that the evidence establishes sufficient specific and articulable facts upon which to base a reasonable suspicion that Heapy avoided the checkpoint to evade arrest or detection. It is undisputed that Heapy passed the second sign warning motorists of an impending intoxication checkpoint, which was situated 250 feet from the checkpoint area itself. As such, it is clear that Heapy was less than 250 feet away from the checkpoint when he made his right turn onto Mehameha Loop.

Moreover, it is undisputed that two four-foot-by-four-foot fluorescent orange signs provided notice of the impending checkpoint to south-bound motorists on Mokulele Highway and that Heapy passed both signs prior to making his turn. And, the district court's unchallenged finding indicates that the large lighting tower illuminating the checkpoint and the flag officer were fully visible from the intersection of Mokulele Highway and Mehameha Loop. Finding of Fact (FOF) No. 17.

Although Officer Correa did not observe a "suspicious driving pattern" and Heapy's "turn was not effected in an illegal manner," FOF No. 18, other circumstances, namely, the nature of Mehameha Loop and the surrounding area, reasonably indicated that Heapy was intentionally avoiding the roadblock to evade arrest or detection. Specifically, Officer Correa testified that "Mehameha Loop is approximately a quarter of a mile long which terminates with a bright yellow, pipe metal[] gate blocking the roadway" and "is surrounded on both sides by sugarcane fields." As such, "it was clear that [one] couldn't drive on to the rest of Mehameha Loop." The metal gate appears to cut off the remainder of Mehameha Loop, which apparently led to a "newly paved" cane field road. The public is not allowed to travel on the cane field road. The only structure located on Mehameha Loop is an animal shelter, which was not open for business at the time Heapy turned onto Mehameha Loop. Officer Correa further testified that, "[b]eyond the [a]nimal [s]helter[,] there is nothing[] but the

blocked portion of the roadway and the cane haul road and sugar canefields. There's nothing down there, so there's no real reason to be on that road." (Emphasis added.) Officer Correa also did not observe any other vehicle entering Mehameha Loop prior to Heapy's vehicle and noted that Heapy "did not appear to be changing course or speed and continued driving toward the gate" once he made the turn onto Mehameha Loop. FOF No. 25 (emphasis added). Moreover, Officer Correa waited for Heapy to pass the closed animal shelter and its parking lot before he activated his emergency lights in order to effect an investigatory stop. FOF No. 26.

Finally, I believe Officer Correa's experience also "gave him specific and articulable facts and inferences drawn therefrom to form a reasonable suspicion that [Heapy] was committing a crime." Snyder, 538 N.E.2d at 965. The district court entered the following findings relating to Officer Correa's experience:

> 2. Officer Correa has been employed with the Maui Police Department [(MPD)] for twelve years and is currently assigned [to] the traffic division[.]
> 3. Officer Correa was formerly a member for the DUI Task Force unit for four years[.]
> 4. Officer Correa has participated in approximately 50 intoxication checkpoints.
> 5. Officer Correa estimated that he has been assigned the "chase car" position approximately 20 times[.]
> 6. Officer Correa indicated that he has effected approximately 40 stops on cars that attempted to avoid the intoxication checkpoint[.]
> 7. That **in every case** the individual avoiding the checkpoint was either intoxicated or was violating the law in some other way such as[] not having vehicle insurance or [a] driver[']s license[] or having an outstanding warrant[.]

(Bold and underscored emphases added.) Consequently, I believe that Officer Correa's experience is more closely akin to Trooper Maxwell's and Deputy Sheriff Cooper's experience as described in Snyder and Steinbeck, respectively, as opposed to Officer Katz's experience as set forth in Murphy.[3] Moreover, Officer Correa testified on cross examination that he did not see Heapy looking at a map, but recalled Heapy informing him that he was lost once he stopped Heapy. On redirect examination, Officer Correa testified that, in his experience, "[l]ost people never avoid [checkpoints]" because "[they] come to the police for directions." (Emphasis added.) In my view, the district court clearly examined the totality of the circumstances in reaching its determination that Officer Correa indeed had specific and articulable facts to justify the investigative stop, stating:

[3] I note that the plurality itself cites to Murphy's conclusion that "the act of a driver in making a lawful right turn 350 feet before a roadblock does not give rise to a reasonable suspicion of criminal activity unless the driver's turn or action is coupled with other articulable facts, such as . . . some behavior which independently raises suspicion of criminal activity." Plurality at 17 n.9 (citing Murphy, 384 S.E.2d at 128) (internal quotation marks and emphasis omitted). Specifically, the plurality states that Heapy's "turn was not 'coupled with' any 'behavior which independently raise[d] suspicion of criminal activity,' for it cannot be said that lawfully driving down a road 'independently raises suspicion of criminal activity.'" Plurality at 17 n.9 (some internal quotation marks, citation, and emphasis omitted). The factual circumstances in Murphy, however, are clearly distinguishable from the facts in the instant case. Most notably, as discussed above, the nature of Mehameha Loop, the surrounding area, and Heapy's driving toward the metal gate without changing course or speed is clearly distinguishable from the road at issue in Murphy, that is, Angela Drive, a dead end street with apartments facing onto it. Consequently, I believe that there are other articulable facts from the record in this case that "give rise to a reasonable suspicion of criminal activity." Murphy, 384 S.E.2d at 128 (stating that, "[i]n determining whether an 'articulable and reasonable suspicion' justifying an investigatory stop of the vehicle exists, courts must consider 'the totality of the circumstances -- the whole picture'") (citations omitted) (emphasis added).

> In this case, the evidence was that in two hours of moderate traffic the only vehicle that turned onto Mehameha Loop was [Heapy's] vehicle. That, again, there was no reason to turn onto that Mehameha Loop. It went into a canefield. There was no good reason to turn on it. And if someone was lost they could have simply stopped and asked the police officers who were there under considerable lighting where they were.
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> It seems to me that there is reasonable grounds for suspicion on the part of the officer that Mr. Heapy was indeed avoiding the roadblock, and that, therefore, he had the -- right to stop Mr. Heapy and investigate further. He did not execute any stop of -- of Mr. Heapy until it was clear that he was -- had gone pas[t] the [a]nimal [s]helter and that he was just turning into a canefield. That he was not just turning around.

(Emphases added.)

Notwithstanding the logic behind the district court's ruling, the plurality devotes a significant portion of its opinion to the proposition that, "in stopping vehicles turning in advance of the checkpoint, the procedure [instituted by MPD in this case] exceeded the authority granted to the police to establish roadblocks under HRS §§ 291E-19 and -20 (Supp. 2005)." Plurality at 4 (footnote omitted). Specifically, the plurality maintains that HRS §§ 291E-19 and -20 "do not authorize, as part of a roadblock procedure, a stop of a vehicle operated lawfully that turns in advance of the actual checkpoint." Plurality at 36. However, in the instant case, Heapy, on appeal, does not challenge per se the propriety of the police establishing roadblocks under HRS §§ 291E-19 and 20. In fact, at the hearing on the motion to suppress, the prosecution and Heapy's counsel agreed that Heapy was "only contesting the reasonable suspicion aspect of the [investigatory] stop[.]" (Emphasis added.) In

addition, at the conclusion of the hearing, the following colloquy ensued:

> [HEAPY'S COUNSEL]: [T]here's been no evidence in this case that the State was in compliance with [HRS §] 291E-20.
> THE COURT: Okay. I understand.
> [THE PROSECUTION]: There's no -- no evidence to the contrary either, your Honor.
> THE COURT: Yeah. Yeah.
> [THE PROSECUTION]: That was not an issue.

(Emphasis added.) Thus, under the circumstances of this appeal, I would decline to consider any theories not advanced by Heapy. See Pulawa v. GTE Hawaiian Tel, -- Hawai'i --, --, -- P.3d --, -- (2006) (declining to consider any theories not advanced by the appellants). See, e.g., Binion, 900 S.W.2d at 704 n.1 (determining that, inasmuch as the appellant "ha[d] not challenged the per se constitutionality of driver's license roadblocks," it "need not decide this issue"); Murphy, 384 S.E.2d at 129 n.3 (concluding that, because the defendant did "not challenge the validity of the roadblock [at issue in the case], the constitutionality of required nondiscretionary use of 'chase cars' to stop every turning vehicle within a certain radius in a roadblock procedure is not before [this court]").

Moreover, the plurality relies on the National Highway Traffic Safety Administration [NHTSA]'s "Guide," entitled "The Use of Sobriety Checkpoints for Impaired Driving Enforcement" [hereinafter, the Guide]. Plurality at 40-47. The plurality, however, essentially disregards the fact that Heapy's counsel unsuccessfully attempted to enter the Guide as evidence at the

hearing on the motion to suppress. Indeed, after the prosecution objected to defense counsel's attempt to enter the Guide as evidence, the district court sustained the prosecution's objection on the bases that the Guide was not relevant and that it did not fall "within any exception to the hearsay rule." And, Heapy does not challenge the foregoing ruling on appeal. As such, I would decline to consider the Guide under the circumstances of this appeal. See, e.g., State v. Gella, 92 Hawai'i 135, 141 n.7, 988 P.2d 200, 206 n.7 (1999) (declining to address an issue because none of the parties raised such issue on appeal).[4]

The plurality also relies on State v. Talbot, 792 P.2d 489 (Utah Ct. App. 1990), for the proposition that "[t]he majority of jurisdictions which have addressed the issue of flight have held that the mere act of avoiding confrontation does not create an articulable suspicion." Plurality at 21 (internal

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[4] The plurality, however, states that "[t]he argument that [Heapy] failed to raise on appeal HRS §§ 291E-19 and -20, and the exclusion of the Guide into evidence, is misplaced." Plurality at 42. The plurality explains that

> [a]ny exposition of the case law in our jurisdiction and from other jurisdictions would be incomplete and misleading without a contextual reference to the roadblock statutes and the Guide, which have their genesis in the constitutional text prohibiting unreasonable seizures.

Plurality at 42 (footnote omitted). Stated differently, the plurality essentially takes the position that this court must "scour the universe" in order to avoid a "misleading" opinion, despite the fact that Heapy does not challenge the propriety of the police establishing roadblocks under the relevant statutes nor the district court's ruling to exclude the Guide as evidence. In my view, the plurality's "standard" promotes the appellate courts becoming advocates for the appellants, a result that is untenable.

quotation marks and citations omitted). However, as indicated by the South Dakota Supreme Court in Thill:

> Notwithstanding the general freedom to avoid police confrontation, we find the avoidance of the police roadblock in this instance was sufficient to create an articulable and reasonable suspicion of criminal activity. Automobiles and their use on state roads are the subject of significant state regulation (e.g.[,] licensing, registration). . . . And while people are not shorn of their Fourth Amendment protection when they step . . . into their automobiles, [Delaware v.] Prouse, 440 U.S. [648,] 663 [(1979)], their actions on the road become subject to increased state regulation and restriction. Consequently, actions taken on the road, the character of which would be innocent in another context, may well give rise to an articulable and reasonable suspicion of a violation of the law respecting the use or ownership of an automobile.

Thill, 474 N.W.2d at 88 (emphasis added); see also Metz, 602 A.2d at 1333-34 (same). Thus, in light of the foregoing, I believe that Heapy's turn onto Mehameha Loop less than 250 feet from the checkpoint, coupled with the notice of the checkpoint, the nature and surrounding area of Mehameha Loop, and Officer Correa's prior experience, "constitute specific, reasonable, and articulable facts which allowed [Officer Correa] to draw an inference sufficient to form a reasonable suspicion that [Heapy] might have been engaging in criminal activity." Steinbeck, 862 S.W.2d at 914.

Lastly, I must reiterate that the effectiveness of intoxication checkpoints would be reduced if motorists are permitted to avoid them. As previously mentioned,

> [i]f police officers stationed at roadblocks were not permitted to stop such [evasive] drivers, the very drivers the police seek to deter could flagrantly avoid the roadblocks and the stops would lose their deterrent value. . . .

> The alternative is to tell police officers that[,] in spite of their experience, they may not infer from a driver's attempt to avoid a roadblock that the driver is very likely engaged in the commission of a crime. Such a rule would seem to tell police officers to "ignore reality."

Snyder, 538 N.E.2d at 965-66. In other words, "[c]ommon sense draws one to the conclusion that permitting motorists to choose whether they desire to cooperate with a checkpoint will reduce its effectiveness, detract from its deterrent effect, and, on occasion, create safety hazards." Hester, 584 A.2d at 259. Furthermore, as the North Carolina Supreme Court logically recognized,

> [i]t is obvious that a law-enforcement agency cannot make impaired driving checks of drivers of vehicles on highways unless such vehicles can be stopped. Certainly, the purpose of any checkpoint and [statutes governing the establishment, organization, and management of impaired driving checkpoints] would be defeated if drivers had the option to legally avoid, ignore or circumvent the checkpoint by either electing to drive through without stopping or by turning away upon entering the checkpoint's perimeters. Further, it is clear that the perimeters of the checkpoint or the area in which checks are conducted would include the area within which drivers may become aware of its presence by observation of any sign marking or giving notice of the checkpoint. Therefore, we hold that it is reasonable and permissible for an officer to monitor a checkpoint's entrance for vehicles whose drivers may be attempting to avoid the checkpoint, and it necessarily follows that an officer, in light of and pursuant to the totality of the circumstances or the checkpoint plan, may pursue and stop a vehicle which has turned away from a checkpoint within its perimeters for reasonable inquiry to determine why the vehicle turned away.
>
> Our state's interest in combating intoxicated drivers outweighs the minimal intrusion that an investigatory stop may impose upon a motorist under these circumstances.

Foreman, 527 S.E.2d at 924-25 (internal quotation marks omitted) (emphases added). Likewise, I believe that our state's interest in combating intoxicated motorists, as well as our state's interest in protecting the safety of the public, outweighs the

minimal intrusion that an investigatory stop may impose upon a motorist under the circumstances of the present case. See State v. Ferreira, 988 P.2d 700, 706 (Idaho Ct. App. 1999) (recognizing that the "state's interest in stopping drunk driving is compelling, because protecting citizens from life-threatening danger is a paramount concern") (internal quotation marks and citation omitted); State v. Johnson, 15 P.3d 1233, 1239 (N.M. 2000) (stating that "the public's interest in deterring individuals from driving while intoxicated is compelling") (internal quotation marks and citation omitted); cf. McCloskey v. Honolulu Police Dep't, 71 Haw. 568, 576, 799 P.2d 953, 958 (1990) (stating that protecting the safety of the public is a compelling interest served by the police department's drug testing program and, thus, holding that such drug testing program did "not violate our constitution[,]" specifically, article I, sections 6 and 7) (emphasis added). Accordingly, I would affirm the district court's March 18, 2005 judgment.