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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee-Respondent,

vs.

MICHAEL SPILLNER, Defendant-Appellant-Petitioner.

NO. 27722

ON WRIT OF CERTIORARI FROM THE INTERMEDIATE COURT OF APPEALS
(CITATION NOS. 5878068MO & 5878069MO)

DECEMBER 24, 2007

MOON, C.J., LEVINSON, NAKAYAMA, AND DUFFY, JJ.,
AND ACOBA, J., DISSENTING SEPARATELY

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I
2007 DEC 24 AM 9:05
FILED

OPINION OF THE COURT BY LEVINSON, J.

On July 20, 2007, the defendant-appellant-petitioner Michael Spillner filed an application for a writ of certiorari urging this court to review the summary disposition order (SDO) of the Intermediate Court of Appeals (ICA) in State v. Spillner, No. 27722 (Haw. App. Apr. 13, 2007) [hereinafter, "the ICA's SDO"], which affirmed the 'Ewa district court's January 4, 2006 judgments, the Honorable Valerie W.H. Chang presiding, convicting him of and sentencing him for one count each of driving while unlicensed, in violation of Hawai'i Revised Statutes (HRS) § 286-102 (1993 & Supp. 2002) (offense one), and driving without motor vehicle insurance, in violation of HRS § 431:10C-104 (Supp. 1997) (offense two). In his application, Spillner asserts that the district court erred: (1) in denying his motion to suppress the fruits of the March 1, 2005 traffic stop, during which

Honolulu Police Department Officer Arthur Takamiya cited Spillner for offenses one and two; and (2) in convicting him on the basis of illegally obtained evidence. On August 21, 2007, this court granted Spillner's application and, on October 31, 2007, we heard oral argument.

For the reasons discussed herein, we conclude that Spillner's points of error are ultimately meritless and, therefore, affirm the ICA's April 24, 2007 judgment on appeal.

I. BACKGROUND

On February 15, 2005, Officer Takamiya stopped Spillner for sporting illegal window tinting on his vehicle and, during the stop, determined that Spillner had neither a valid driver's license nor insurance for his vehicle. Officer Takamiya stopped Spillner's vehicle again, a week later, upon observing that the illegal tinting had not been removed. At the time of the second stop, Spillner's girlfriend was driving the vehicle, which, Officer Takamiya determined, was still uninsured. Then, on March 1, 2005, Officer Takamiya once again stopped Spillner, driving the same vehicle, and cited him for offenses one and two.

A. Spillner's Pretrial Motion To Suppress And The Trial

On August 15, 2005, Spillner filed a motion to suppress "evidence obtained from warrantless . . . seizures of [Spillner] and/or [his] property," which the district court consolidated with its bench trial. Spillner asserted that:

> 1. . . .
> a. . . . [T]he justification for the search and seizure conducted by . . . [O]fficer [Takamiya] was based on prior contact with [Spillner].
> b. . . . [O]fficer [Takamiya] could not have known if [Spillner] had obtained a driver's license or . . .

> insurance[] subsequent to the prior contact . . . .
> . . . .
> e. The interrogation effectuated upon [Spillner] constitute[d] a seizure.
> 2. The stop and seizure of [Spillner]'s person and property was not supported by . . . a reasonable suspicion based on specific articulable facts . . . that any criminal activity was afoot.
> . . . .
> 4. The charges against [Spillner] constitute fruits of the unlawful stop and seizure.
> . . . .
> . . . "[B]ut for" the unlawful invasion, the evidence . . . would not have been obtained.

(Citing U.S. Const. amends. IV (prohibiting "unreasonable searches and seizures"), XIV (concerning due process); Haw. Const. art. I, § 7 (prohibiting "unreasonable searches, seizures and invasions of privacy"); State v. Bolosan, 78 Hawai'i 86, 890 P.2d 673 (1995).)

On November 30, 2005, the district court conducted both the trial and the hearing on Spillner's motion to suppress. The only witness was Officer Takamiya, who testified for the plaintiff-appellee-respondent State of Hawai'i [hereinafter, "the prosecution"]. The prosecution elicited the following testimony on direct examination:

> **Q** . . . [W]ere you assigned on foot or in a vehicle on March 1st[, 2005]?
> **A** In a vehicle.
> **Q** And what brought your attention to [Spillner] . . .
> . . . .
> . . . [o]n that very day?
> . . . .
> **A** I saw . . . [his] vehicle making a right turn . . . .
> . . . .
> **Q** And what brought your attention to [him?] I know you saw the vehicle, but what made it stand out?
> **A** . . . [O]ne to two weeks prior to this day, I cited . . . Spillner in the exact same vehicle for having illegal front tints and no driver's license and no insurance.

Q . . . [Y]ou were able to recognize the defendant?
A Yes.
Q He was fresh on your mind?
A Yes.
Q And did you recognize the car[] or . . . the person?
A . . . [B]oth.
. . . .
Actually, I recognized the car first and then I could see through the front windshield because the tints were removed, . . . and I could see . . . Spillner driving.
Q And you recognized his face?
A Yes.
Q . . . Upon making this observation, what were you thinking?
A That . . . Spillner was driving without a license and no insurance.
Q And what made you . . . think that?
A Because I cited him one to two weeks prior[]
. . . .
. . . [f]or driving without [a] license and . . . without insurance and also the illegal . . . tinted windshield.
Q So, upon making these observations, what was your next move?
. . . .
A I located him between a quarter mile to half a mile up the street . . . .
. . . .
Q . . . And he . . . .
A . . . pulled over.
Q . . . [A]nd once you stopped, who did you see behind the wheel?
A . . . Spillner.
. . . .
Q . . . Was he alone in the vehicle?
A Yes.
Q And did you ask him for his . . . license?
A I did knowing that he didn't have one, but I still asked him for one.
Q And what was his response?
A He said he doesn't have one.
. . . . [(Objection to speculation overruled.)]
Q . . . [D]id [Spillner] make any statements at this point?
A Not that I recall.
. . . .
Q . . . [D]id you ask for his proof of insurance?
A Yes . . . .
Q Was he able to provide that . . . ?
A No . . . .
Q What was his response?

A I'm not exactly sure word for word, but he basically told me that he didn't have any insurance.

(Some ellipses added and one in original.) At this point, Spillner essentially requested that the court strike Officer Takamiya's response in accordance with Spillner's motion to suppress. The court indicated that it "w[ould] take [Spillner's] objection under advisement." Spillner's counsel then cross-examined Officer Takamiya as follows:

Q . . . [Y]ou did not observe any outward signs of any traffic violations, isn't that true?
A That's true.
. . . .
Q And he pulled over without incident?
A Yes.
. . . .
Q And you pulled him over . . . on the assumption that he had no driver's license and was not insured?
A Yes.
. . . .
Q Now, from [your earlier traffic stop of Spillner] to March 1st, 2005, you don't have any first-hand knowledge whether or not he obtained a license in those two weeks, isn't that true?
A That's true.
Q You don't have any first-hand knowledge whether or not he obtained insurance . . . in those two weeks, isn't that true?
A That's true.
. . . .
Q You just assumed based on your prior encounter with him that he wasn't insured and he had no license?
. . . .
A . . . As far as the driver's license, that's an assumption. As far as the insurance, I stopped his girlfriend driving that same truck one week prior without insurance with the same tinted front windshield.
Q . . . But between the time that you stopped and cited his girlfriend and when you stopped and cited him on March 1st, . . . you don't have any first-hand knowledge whether or not the vehicle was insured in that one week's time?
A That's correct.

The district court also received into evidence, over Spillner's objection, what purported to be a self-authenticating record from the City and County of Honolulu's Division of Motor Vehicle, Licensing and Permits demonstrating that Spillner did not have a license on March 1, 2005. Without express reasoning, the district court denied Spillner's motions to suppress and for judgment of acquittal. As memorialized in its January 4, 2006 judgments, the district court found Spillner guilty as charged and sentenced him to a total of $149.00 in fees, 330 hours of community service, and a one-year suspension of driving privileges.

B. The ICA's Disposition Of Spillner's Appeal

On January 20, 2006, Spillner filed a timely notice of appeal. On direct appeal, he reiterated, inter alia, his position that his "stop and seizure . . . was not supported by . . . a reasonable suspicion based on specific and articulable facts . . . that any criminal activity was afoot. The interrogation was therefore without . . . justification. The evidence obtained . . . and the resulting charges constitute 'fruits of the poisonous tree.'" (Citing State v. Poaipuni, 98 Hawai'i 387, 392, 49 P.3d 353, 358 (2002).) Specifically, Spillner argued that, inasmuch as Officer Takamiya, by his own admission, witnessed no violation in progress, he stopped Spillner's vehicle solely on the "assumption that Spillner had no driver's license and that the vehicle was not insured," based in turn on the traffic stop that had occurred two weeks earlier. (Emphasis omitted.) (Citing United States v. Sandoval, 829 F.

Supp. 355, 360 (D. Utah 1993) (mem.), rev'd, 29 F.3d 537, 538 (10th Cir. 1994); Robinson v. State, 388 So. 2d 286, 290 (Fla. Dist. Ct. App. 1980).) Spillner attempted to distinguish State v. Kaleohano, 99 Hawai'i 370, 56 P.3d 138 (2002), by noting that, in contrast to the police officer in Kaleohano, whose "prior knowledge of the motorist's criminal history . . . 'heightened' . . . initial suspicions," Officer Takamiya had no "'specific articulable facts indicating the probability of current criminal activity'" aside from the prior violations. (Emphasis omitted.) (Quoting Kaleohano, 99 Hawai'i at 380, 56 P.3d at 148.) If anything, Spillner maintained, it would have been "more reasonable" for Officer Takamiya to assume from Spillner's having removed the illegal tinting by the time of the instant stop that he had obtained insurance and a license in the interim as well.

In its answering brief, the prosecution simply countered that Officer Takamiya's "observ[ing Spillner]" driving a motor vehicle "one to two weeks after" their earlier encounter was a "specific and articulable fact[]" that would give rise to a reasonable suspicion. (Citing State v. Bohannon, 102 Hawai'i 228, 237, 74 P.3d 980, 989 (2003).) The prosecution added that none of the cases cited by Spillner "involve an 'ongoing' offense, . . . a past citation for [which] may provide a basis for reasonable suspicion because there is an assumption . . . that the condition that le[]d to the prior citation may very well still exist, absent any concrete information to contradict that assumption." (Quoting State v. Decoteau, 681 N.W.2d 803, 806 (N.D. 2004) ("When an officer observes a person driving a

vehicle, and the driver's license was suspended when the officer stopped him one week earlier, it is far from a 'mere hunch' to suspect the driver's license is still under suspension.").) (Citing United States v. Hope, 904 F.2d 254 (7th Cir. 1990).)

In his reply brief, Spillner attempted to distinguish Decoteau on the basis that the driving privileges of the defendant in that case presumably would have been suspended for a definitive period of time, such that observing the defendant driving within that period of revocation (assuming the officer knew the duration of such period) would create a reasonable suspicion in and of itself, whereas Officer Takamiya had no reason to believe that Spillner had not applied for and received a license during the intervening two weeks and obtained insurance during the intervening one week.

In its SDO, the ICA decided that Officer Takamiya "had 'reasonable suspicion that [Spillner] was engaged in criminal conduct,'" ICA's SDO at 1 (quoting State v. Eleneki, 106 Hawai'i 177, 180, 102 P.3d 1075, 1078 (2004)), and, therefore, affirmed the district court's denial of Spillner's motion to suppress, the judgment, and the sentence imposed, id. at 1-2.

C. The Application For A Writ Of Certiorari And Oral Argument

On July 20, 2007, Spillner filed an application for a writ of certiorari, which this court granted on August 21, 2007. On October 31, 2007, we conducted oral argument on the issue of whether Officer Takamiya's brief detention of Spillner violated Spillner's constitutional protections against unreasonable searches and seizures, as guaranteed by the fourth amendment to

the United States Constitution[1] and article I, section 7 of the Hawai'i Constitution.[2]

At oral argument, Spillner essentially contended that independent reasonable suspicion warranting a brief detention could never exist for the crimes of driving without a license or insurance. Rather, he argued that the criminal activity could only be discovered as an incident of an independent traffic violation observed by an officer, which would serve as an independent justification for stopping the vehicle. He also maintained that, regardless of how often an officer had stopped an individual for driving without insurance, the officer would never have independent grounds for reasonable suspicion to conduct a brief investigatory stop in order to ascertain the state of the vehicle's insurance, even if the stop were proximate in time to multiple previous violations.

The prosecution emphasized that reasonable suspicion, while more than a mere hunch, does not rise to the level of probable cause. It conceded that it was possible for Spillner to have corrected both his unlicensed condition and to have obtained insurance on his vehicle, but maintained that that did not preclude the officer from being reasonably suspicious that

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[1] The fourth amendment to the United States Constitution provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

[2] The wording of article I, section 7 of the Hawai'i Constitution is virtually identical to its federal counterpart, providing in relevant part that "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated . . . ."

Spillner was engaged in an ongoing violation when the officer observed him operating his vehicle, particularly in light of the fact that the second stop of the vehicle, a week after the initial encounter, revealed that Spillner had not, in the interim, obtained insurance.

II. STANDARD OF REVIEW

> A trial court's ruling on a motion to suppress evidence is reviewed de novo to determine whether the ruling was "right" or "wrong." State v. Edwards, 96 Hawai'i 224, 231, 30 P.3d 238, 245 (2001) (citing State v. Jenkins, 93 Hawai'i 87, 100, 997 P.2d 13, 26 (2000)). The proponent of the motion to suppress has the burden of establishing, by a preponderance of the evidence, that the statements or items sought to be excluded were unlawfully secured and that his or her right to be free from unreasonable searches or seizures was violated under the fourth amendment to the United States Constitution and article I, section 7 of the Hawai'i Constitution. See State v. Wilson, 92 Hawai'i 45, 48, 987 P.2d 268, 271 (1999) (citations omitted).

Kaleohano, 99 Hawai'i at 375, 56 P.3d at 143.

III. DISCUSSION

A. Reasonable Suspicion Requires An Articulated Rationale That Supports The Conclusion That Criminal Activity May Be Afoot, Sufficient To Justify A Brief, Investigatory Stop.

There is no dispute that a traffic stop is a form of seizure for constitutional purposes. See, e.g., Bohannon, 102 Hawai'i at 237, 74 P.3d at 989 (citing Bolosan, 78 Hawai'i at 92, 890 P.2d at 679). That being the case, the fruits of such a traffic stop are illegally obtained and subject to suppression on the defendant's motion unless

> "the police officer [can] point to specific and articulable facts which, taken together with rational inferences from those facts,

> reasonably warrant that intrusion." Terry v. Ohio, . . . 392 U.S.[1,] 21 [(1968)]. The ultimate test in these situations must be whether from these facts, measured by an objective standard, a [person] of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate. [State v. Barnes,]58 Haw. [333,] 338, 568 P.2d [1207,] 1211[(1977)] (citations omitted).
>
> State v. Powell, 61 Haw. 316, 321-22, 603 P.2d 143, 147-48 (1979).
>
> [Bolosan, 78 Hawai'i at 92, 890 P.2d at 679] (some brackets added and some omitted).

Bohannon, 102 Hawai'i at 237, 74 P.3d at 989; see also State v. Kearns, 75 Haw. 558, 569, 867 P.2d 903, 908 (1994) ("[T]he police may temporarily detain an individual if they have a reasonable suspicion based on specific and articulable facts that criminal activity is afoot." (Citing State v. Melear, 63 Haw. 488, 493, 630 P.2d 619, 624 (1981).)). In analyzing whether reasonable suspicion supported a stop, this court considers the totality of the circumstances. See, e.g., State v. Prendergast, 103 Hawai'i 451, 454, 83 P.3d 714, 717 (2004); Bohannon, 102 Hawai'i at 238, 74 P.3d at 990.

The United States Supreme Court recently, in considering the reasonableness of drug-interdiction traffic stops, expounded on the "reasonable officer" standard employed when weighing the totality of the circumstances:

> When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. See, e.g., [United States v. Cortez, 449 U.S. 411,] 417-[]18

> [(1981)]. 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 elude an untrained person." Id.[] at 418. See also Ornelas v. United States, 517 U.S. 690, 699 (1996) (reviewing court must give "due weight" to factual inferences drawn by resident judges and local law enforcement officers). Although an officer's reliance on a mere "'hunch'" is insufficient to justify a stop, Terry, . . . [392 U.S.]at 27, the likelihood of criminal activity need not rise to the level of probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard, [United States v.] Sokolow, [490 U.S. 1,] 7 [(1989)].

United States v. Arvizu, 534 U.S. 266, 273-74 (2002) (Some internal citations omitted.) Moreover, the Arvizu Court "recognized that the concept of reasonable suspicion is somewhat abstract," id. at 274, and that "[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct," id. at 277.

Spillner, nevertheless, interprets the "objective standard" to mean that the theoretical reasonable observer may not consider the knowledge of any prior contacts in forming reasonable suspicion. In other words, Spillner urges that, absent an overt, immediate predicate justification for the traffic stop, such as an illegal maneuver by the driver, the fact that the driver was inadequately credentialed a week or two prior to the instant stop does not justify a stop today. We disagree.

B. Whereas An Officer May Not "Round Up The Usual Suspects," Reasonable Suspicion Can Be Grounded In The Belief That A Particular Individual Is Engaged In Ongoing Criminal Activity.

The myriad decisions regarding reasonable suspicion decided by courts across the nation -- all grounded in a fact-intensive, case-by-case approach -- turn on a careful balance

between the importance of the state interests implicated and the protections afforded citizens against unreasonable interference with their persons and their effects. As the United States Supreme Court articulated in Delaware v. Prouse, 440 U.S. 648 (1979), one of the landmark decisions concerning the standard for reasonable grounds for effecting traffic stops,

> [t]he essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by government officials, including law enforcement agents, in order "'to safeguard the privacy and security of individuals against arbitrary invasions . . . .'" Marshall v. Barlow's, Inc., 436 U.S. 307, 312 (1978), quoting Camara v. Municipal Court, 387 U.S. 523, 528 (1967). Thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.

Prouse, 440 U.S. at 654-55 (footnotes and some internal citations omitted); see also Kaleohano, 99 Hawai'i at 379, 56 P.3d at 147 ("Determining whether a seizure pursuant to a temporary investigative stop is constitutional also involves a 'weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.'" (Quoting Brown v. Texas, 443 U.S. 47, 50-51 (1979).)).

The Prouse Court held that effecting a traffic stop upon a vehicle, absent any observed violations of the traffic or vehicle codes, solely to check on the validity of the driver's license and insurance, amounted to an unreasonable seizure in violation of the fourth amendment to the United States Constitution. 440 U.S. at 663. The State of Delaware had argued that the police officer's random stop was justified by the

state's interest in promoting safe highways, but the Court responded that "[t]he question remains . . . whether in the service of these important ends the discretionary spot check is a sufficiently productive mechanism to justify the intrusion upon Fourth Amendment interests which such stops entail," id. at 660. The Court required "at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered," id., because unprompted checks of randomly selected vehicles was not likely to yield more unlicensed drivers or unregistered vehicles than would requiring police officers to articulate a specific rationale supporting reasonable suspicion that a particular driver was operating an unregistered vehicle or driving without a license. Id. at 660-61. Weighing the intrusion into constitutionally protected areas affected by the stops against the lack of evidence that such stops advanced the interests of highway safety, the Court concluded that "[t]he marginal contribution to roadway safety possibly resulting from a system of spot checks cannot justify subjecting every occupant of every vehicle on the roads to a seizure . . . at the unbridled discretion of law enforcement officials." Id. at 661.

The danger of "the unbridled discretion of law enforcement officials," id., also prohibits law enforcement from basing a stop solely on an officer's knowledge of a particular citizen's criminal background:

> [K]nowledge of a person's prior criminal involvement (to say nothing of a mere arrest) is alone insufficient to give rise to the requisite reasonable suspicion. That is the direct thrust of our opinion in United States v. Santillanes, 848 F.2d 1103, 1107-08 (10th. Cir. 1988), . . . and we have found no case elsewhere that even suggests the contrary . . . .

> If the law were otherwise, any person with any sort of criminal record -- or even worse, a person with arrests but no convictions -- could be subjected to a Terry-type investigative stop by a law enforcement officer at any time without the need for any other justification at all. Any such rule would clearly run counter to the requirement of a reasonable suspicion, and of the need that such stops be justified in light of a balancing of the competing interests at stake (United States v. Place, 462 U.S. 696, 703 . . . (1983)):
>
> > We must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. When the nature and extent of the detention are minimally intrusive of the individual's Fourth Amendment interests, the opposing law enforcement interests can support a seizure based on less than probable cause.

Sandoval, 29 F.3d at 542-43 (emphasis in original), quoted in United States v. Laughrin, 438 F.3d 1245, 1247 (10th Cir. 2006) ("'[K]nowledge of a person's prior criminal involvement . . . is alone insufficient to give rise to the requisite reasonable suspicion,'" because "[u]nder the Fourth Amendment our society does not allow police officers to 'round up the usual suspects'"); see also Robinson, 388 So. 2d at 290 (vacating the denial of the defendant's motion to suppress and remanding for discharge of the defendant where the court concluded that the police officer on airport patrol effected the stop of the defendant based solely on the officer's personal knowledge of the defendant's criminal past). While this court has not fully articulated its view of the proper role that a defendant's criminal record plays in formulating reasonable suspicion -- assuming, given the fact-intensive nature of the inquiry, that such an articulation is even possible -- it has favorably quoted

the language from Sandoval and has "rejected the notion that a person's prior reputation . . . , standing alone, was sufficient to establish probable cause for an arrest and [has concluded that], at best, [it] was entitled to only minimal weight when combined with other elements." Kaleohano, 99 Hawai'i at 377, 56 P.3d at 145 (quoting State v. Kanda, 63 Haw. 36, 48, 620 P.2d 1072, 1080 (1980) (emphasis added)).[3]

Nevertheless, we must be careful to distinguish (1) an officer's improper reliance, in forming reasonable suspicion, on a defendant's past law violations that have come to an end from (2) an officer's reliance on knowledge of a suspected ongoing law violation engaged in by the individual in question; the former, if relied upon alone to justify the stop, represents a violation of a citizen's reasonable expectation to be left alone and our society's abhorrence of police practices that "'round up the usual suspects,'" Laughrin, 438 F.3d at 1247, while the latter, if properly informed by the facts, represents good police work. Indeed,

> [a]lthough we have already emphasized that a person's prior history of drug arrests is insufficient to establish probable cause, awareness of past arrests may, when combined with other specific articulable facts indicating the probability of current criminal activity, factor into a determination that reasonable suspicion, sufficient to warrant a temporary investigate stop, exists. See United States v. Feliciano, 45 F.3d 1070, 1074 (7th Cir. 1995) (emphasizing that "[k]nowledge of . . . recent relevant criminal conduct, while of doubtful

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[3] It is equally generally uncontroverted that an unreasonable stop, even if temporary, is one in which "the officer purposefully embarked on what was legally nothing more than a fishing expedition, apparently '"in the hope that something might turn up."'" Sandoval, 29 F.3d at 544 (quoting United States v. Fernandez, 18 F.3d 874, 878 (10th Cir. 1994) (quoting Brown v. Illinois, 422 U.S. 590, 605 (1975))).

> evidentiary value in view of the strictures against proving guilt by association or by a predisposition based on past criminal acts, is a permissible component of the articulable suspicion required for a Terry stop." (Emphasis in the original.)).

Kaleohano, 99 Hawai'i at 380, 56 P.3d at 148. We have also noted that

> [n]either the fourth amendment nor the Hawai'i Constitution
>
> require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response.

Id. (quoting Adams v. Williams, 407 U.S. 143, 145 (1972)); see also Deboy v. Commonwealth, 214 S.W.3d 926, 928-29 (Ky. Ct. App. 2007) (distinguishing the well-established proposition that a driver's criminal record alone can never justify an investigatory stop from the ongoing nature of the offense of driving with a suspended license, which rendered the officer's suspicion reasonable based on personal knowledge that the defendant's license had been suspended several months before) (citing Decoteau, 681 N.W.2d at 806). In sum, articulated facts that indicate that an offense is ongoing in nature support reasonable suspicion that criminal activity continues to be afoot and, therefore, help justify a brief investigatory stop to confirm or dispel those suspicions.

Spillner challenges this conclusion as applied to the instant matter. He contends that, regardless of how close in time prior criminal activity is with current activity of a similar nature, the prior activity cannot be a factor in the

analysis of reasonable suspicion and that an officer's prior knowledge of past violations, standing alone, can never, as a matter of law, authorize a traffic stop predicated solely upon the officer's suspicion that a driver is committing the offenses of driving without a license or driving without adequate insurance.

This absolutist proposition is demonstrably flawed. Let us posit that, late one evening, an officer effects a valid traffic stop of a vehicle after witnessing an uncontested violation of the traffic or vehicle safety codes and, incidental to that valid stop, the officer discovers that the driver is not merely without his or her license but is, in fact, unlicensed to drive in the jurisdiction. Upon encountering the same individual later the same evening, once again driving -- at a time during which the license-issuing authority has not yet reopened -- the officer would have more than reasonable suspicion to effect a second brief traffic stop of the driver to investigate whether he or she is driving without a license. Reasonable suspicion can, therefore, be established that the defendant has fixedly refused to cease prior criminal behavior, personally observed by the officer, absent other observed violations of the traffic or safety codes.

Even in light of a more protracted interval, however, during which the individual could have corrected the former criminal behavior, a police officer may nevertheless have reasonable suspicion that the person has, in fact, failed to amend his or her behavior. To extend the hypothetical, if the

second encounter occurs after the licensing authority has reopened, it would then be conceivable for the defendant to have renewed his or her license in the interim -- the realistic likelihood of the defendant doing so increasing with the passage of time -- but, depending on the particular facts informing the officer's decision, reasonable suspicion could still warrant effecting a traffic stop of the driver, despite the possibility of innocence, because "[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct," Arvizu, 534 U.S. at 277; see also United States v. Cortez-Galaviz, 495 F.3d 1203, 1208 (10th Cir. 2007) ("Reasonable suspicion requires a dose of reasonableness and simply does not require an officer to rule out every possible lawful explanation for suspicious circumstances before effecting a brief stop to investigate further.") (concluding that reliance on twenty-day old information that the driver did not have insurance did not render the investigatory stop unreasonable); Decoteau, 681 N.W.2d at 806 (explaining that "[t]he reasonable suspicion standard does not require an officer to rule out every possible innocent excuse . . . before stopping a vehicle for investigation," and, insofar as "[p]robabilities, not hard certainties, are used in determining reasonable suspicion," concluding that "[t]he officer's suspicion is not rendered unreasonable merely because the driver's license may have been reinstated in the intervening week").

C. Insofar As (1) In Matters Involving Ongoing Criminal Activity, Timeliness Of Information Is Of Less Import For Reasonable Suspicion Analysis, (2) The Interval In The Present Matter Was Relatively Short, And (3) Officer Takamiya Acted On A Perceived Pattern Of Ongoing License And Insurance Violations, The Stop Was Supported By Reasonable Suspicion.

1. Timeliness of the information is of less import in ongoing violations.

The United States Court of Appeals for the Sixth Circuit recently observed that the timeliness -- the "freshness" or "staleness" -- of the information upon which the officer relies plays less of a factor in reasonable suspicion analysis if the offense is of an ongoing nature:

> In situations where the criminal activity is of an ongoing nature, it will take longer for the information to become stale. See United States v. Greene, 250 F.3d 471, 480 (6th. Cir. 2001) ("Evidence of ongoing criminal activity will generally defeat a claim of staleness.") Driving without a valid license is a continuing offense -- in contrast, say, to a speeding or parking violation . . . .

United States v. Sandridge, 385 F.3d 1032, 1036 (6th. Cir. 2004) (emphasis added). The United States Court of Appeals for the Tenth Circuit recently concurred:

> [W]e note at the outset that timeliness of information is but one of many factors in the mix when assessing whether reasonable suspicion for an investigatory detention exists, and the relative importance of timeliness in that mix depends on the nature of the criminal activity at issue. See, e.g., United States v. Cantu, 405 F.3d 1173, 1177 (10th Cir. 2005). Thus, for example, when the legal infraction at issue typically wears on for days or weeks or months (like, say, driving without a license or appropriate emissions and safety certifications), rather than concludes quickly (like, say, jaywalking or mugging), the timeliness of the information on which the government relies to effect an investigative detention "recedes in importance" compared to other factors, such as the type and duration of [the] offense at issue. Id.; see also United States v. Mathis, 357

> F.3d 1200, 1207 (10th Cir. 2004) (noting that "ongoing and continuous activity makes the passage of time less critical when judging the staleness of information" (internal quotation omitted)).

Cortez-Galaviz, 495 F.3d at 1209 (emphasis added). This court has reached the same conclusion, in the context of ascertaining whether probable cause existed to support the issuance of a search warrant:

> If there is a reasonable basis in the affidavit for the conclusion that the criminal activity alleged by the informer is of a continuing, ongoing nature, the passage of time between the informer's last observations of that activity and the issuance of a warrant is less significant than when no such showing is made in the affidavit.

State v. Austria, 55 Haw. 565, 570, 524 P.2d 290, 294 (1974) (concluding that a delay of twenty-one days did not render the information stale). And, ultimately,

> [the] existence [of reasonable suspicion] is assessed on a case-by-case basis, in light of all attendant circumstances. When evaluating a claim of staleness, courts do not measure the timeliness of information simply by counting the number of days that have elapsed. Rather, a court must assess the nature of the information, the nature and characteristics of the suspected criminal activity, and the likely endurance of the information.

United State v. Pierre, 484 F.3d 75, 83 (1st. Cir. 2007).

2. The nature of the ongoing offense informs the analysis of whether suspected criminal activity is still afoot.

Under circumstances in which the freshness of the officer's information, when combined with the nature of the license revocation or suspension, has precluded -- or all but precluded -- a defendant from obtaining the required credentials, courts have concluded that the stop was supported by reasonable suspicion. See, e.g., Stewart v. State, 469 S.E.2d 424, 425 (Ga.

Ct. App. 1996) (determining that, where the officer knew that the defendant had had his license revoked, a traffic stop of the defendant, upon observing the defendant driving, was supported by reasonable suspicion); State v. Duesterhoeft, 311 N.W.2d 866, 868 (Minn. 1981) (concluding that, where the shortest suspension period for a license was thirty days, the officer's personal knowledge that the defendant's license had been suspended one month prior to the stop was sufficient to establish reasonable suspicion and "was not the product of whim or caprice or desire on the part of the officer to harass the defendant"); Decoteau, 681 N.W.2d at 806 (reasoning that a one-week interval between knowledge of the suspension and the current stop did not render the information stale nor the stop unreasonable); State v. Gibson, 665 P.2d 1302, 1304-05 (Utah 1983) (holding that reasonable suspicion warranted a stop effected fifteen months after the last encounter with the defendant where the officer knew that the defendant's license had been suspended for at least a year).

Conversely, where the information relied upon by the officer was so "stale" that, when considered in light of the length of the license suspension or the ease in obtaining the proper credentials, the logical link between the former illegal activity and any suspicion of current, ongoing criminal activity had dissolved with the passage of time, courts have concluded that investigatory stops were unreasonable. See, e.g., McReynolds v. State, 441 So. 2d 1017, 1017-19 (Ala. Crim. App. 1983) (one year stale); Moody v. State, 842 So. 2d 754, 758 (Fla.

2003) (noting that "when, as in this case, as many as three years pass[] without any further information about a person's driving status, and, when, as in this case, that person's license can be restored through a simple administrative process, the staleness of the officer's information is indeed an important factor," and ruling the stop unreasonable); Boyd v. State, 758 So. 2d 1032, 1036 (Miss. Ct. App. 2000) (reasoning that because eight years had passed since the officer last knew that the defendant's license was suspended and the officer did not know the length of the suspension, the stop was not supported by reasonable suspicion); Commonwealth v. Stevenson, 832 A.2d 1123, 1125, 1130-32 & n.9 (Pa. Super. Ct. 2003) (holding that, where the officer did not know the length of the defendant's license suspension and in light of the three-year interval between the officer's last knowledge of the defendant's license status and the present stop, the stop was unreasonable under Pa. Const. art. 1, § 8).

Within these extremes lies a range where reasonable suspicion generally resides. We deem Sandridge and Laughrin to be particularly instructive "bookends" with respect to the period of time during which an officer may have reasonable suspicion that a driver is engaged in an ongoing offense such as driving without a license.

In both cases, a police officer pulled the defendant over solely on the basis of the defendant's prior lack of a valid license. In Sandridge, the officer had run a license status check on the driver twenty-two days earlier, 385 F.3d at 1034; in

Laughrin, the challenged stop followed the prior contact by twenty-two weeks, 438 F.3d at 1246. In Sandridge, the United States Court of Appeals for the Sixth Circuit upheld the district court's denial of the defendant's motion to suppress, rejecting the defendant's argument that "any reasonable suspicion" had grown "stale" in light of the passage of twenty-two days. See 385 F.3d at 1036 (internal quotation signals omitted). On the other hand, the Laughrin court distinguished Sandridge, reasoning that "[t]wenty-two days is significantly less than 22 weeks," such that, in the absence of any particular knowledge on the officer's part as to "the length of the prior suspension," his "information was too stale to justify stopping [the defendant]," based on the five-month interval between the officer's knowledge of Laughrin's suspended license and the present stop. See 438 F.3d at 1247-48.

3. On the facts in the record, the stop was supported by reasonable suspicion.

We believe that Sandridge, Laughrin, and other foreign cases support the district court's and the ICA's implicit conclusion that (1) Officer Takamiya's one-week-old knowledge that Spillner's truck did not carry valid insurance -- and that he had not acted to remedy the insurance violation in the preceding week-long interval -- and (2) his two-week-old knowledge that Spillner was unlicensed were together sufficiently fresh to give rise to reasonable suspicion to execute the March 1, 2005 traffic stop. See generally Pierre, 484 F.3d at 84 (reasoning that the fact that (1) the officer had personal knowledge that the defendant's license had been suspended for the

entire previous year and (2) the officer had not been informed by fellow officers that the defendant's license status had changed -- where such information would be of interest in the on-going investigation -- lent credence to the officer's assumption that the defendant's license remained suspended and holding, therefore, that reasonable suspicion justified the stop of defendant for driving without a valid license five months later); State v. Wade, 673 So. 2d 906, 907 (Fla. Dist. Ct. App. 1996) ("a little less than two weeks" not stale); State v. Carrs, 568 So. 2d 120, 120-21 (Fla. Dist. Ct. App. 1990) ("two days to a week" not stale); Decoteau, 681 N.W.2d at 806 (recognizing reasonable suspicion despite the possibility that "the driver's license may have been reinstated in the intervening week"). Indeed, as the court noted in Cortez-Galaviz,

> the resolution of particularized and objective yet still ambiguous -- potentially lawful, potentially unlawful -- facts is the central purpose of an investigative detention. See Illinois v. Wardlow, 528 U.S. 119, 125 . . . (2000) ("Even in Terry, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation . . . . Terry recognized that the officers could detain the individuals to resolve the ambiguity."); Terry, 392 U.S. at 22 (recognizing "that 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").

495 F.3d at 1206.

4. Moreover, the stop was reasonable in light of the interests advanced and the limited nature of the intrusion.

Ultimately, as noted supra, we analyze the reasonableness of a traffic stop by weighing the interests advanced by enforcing licensing, insurance, and other laws

related to highway safety against the nature and degree of the intrusion by law enforcement into motorists' private lives. Prouse, 440 U.S. at 654-55; Kaleohano, 99 Hawai'i at 379, 56 P.3d at 147. Where a brief investigatory stop, based on particularized information regarding a specific driver, advances the important state interest in highway safety, courts have determined that such stops are not unreasonable intrusions into the private sphere protected by the fourth amendment. See, e.g., Carrs, 568 So. 2d at 121 (applying the Prouse analysis, weighing the state's interest in highway safety against the nature of the intrusion, and concluding (1) that, unlike in Prouse, the interests of highway safety would be advanced in the case before it where, one week after an officer stopped the defendant for driving with an expired license, he observed the defendant driving again, and (2) that the stop was, therefore, based upon reasonable suspicion).

Driving is a privilege, not a right. State v. Davia, 87 Hawai'i 249, 257, 953 P.2d 1347, 1355 (1998) (noting the legislature's finding to that effect). The state has a legitimate interest in ensuring the vehicles on its roadways are properly insured and operated by licensed drivers. Weighing that against the nature of the intrusion in the present case, where the facts demonstrate that Officer Takamiya had a reason "to pluck this needle from the haystack of cars on the road for investigation," Cortez-Galaviz, 495 F.3d at 1206 -- a reason that was likely to advance the state's interest in highway safety -- leads us to conclude the stop was reasonable. Cf. Prouse, 440

U.S. at 663 (holding that where the stop was truly random and had no underlying rationale that demonstrated stopping the defendant's car rather than any other car on the highway would advance highway safety, the stop was unreasonable). The facts in the present matter indicate that Officer Takamiya selected Spillner neither at random nor based upon Spillner's previous criminal history, i.e., by rounding up the usual suspects, cf. Laughrin, 438 F.3d at 1247; Sandoval, 29 F.3d at 542-43, in order to pursue a general intuition that unauthorized driving was in the air. Neither does the record reflect that Officer Takamiya was engaged in a "fishing expedition," Sandoval, 29 F.3d at 544. Rather, the facts indicate that Officer Takamiya reacted to a specific and articulable belief, held particularly as to Spillner, that Spillner's recent behavior of driving without a license and insurance was ongoing, meaning that he had not desisted by either refraining from driving or investing the time and paperwork to obtain the necessary renewals.[4] Cf. State v. Bonds, 59 Haw. 130, 130-32, 134, 136, 138, 577 P.2d 781, 782-84, 786-87 (1978) (wherein the officer "pulled [the defendant driver] over for the purpose of ascertaining whether [the driver] possessed a reconstruction permit as required by . . . ordinance," but without even a hunch that the driver lacked such

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[4] See Cortez-Galaviz, 495 F.3d at 1209 (characterizing driving without a license as an ongoing offense); Laughrin, 438 F.3d at 1248 ("It might be argued that [the o]fficer . . . had reasonable suspicion to stop Mr. Laughrin based not on his criminal history, of driving without a valid license, but on the ongoing violation of driving without a valid license . . . ."); Sandridge, 385 F.3d at 1036 ("Driving without a valid license is a continuing offense -- in contrast, say, to a speeding or parking violation . . . .").

a permit or was committing any other violation, mandating suppression of the nunchakus and marijuana found in the car). Certainly, the fact known personally by Officer Takamiya, that Spillner had not obtained insurance on his vehicle one week after being advised that he was required by law to do so, indicated a cavalier attitude on Spillner's part toward the law and was sufficient to justify a brief field detention by Officer Takamiya to ascertain whether continued criminal activity were afoot. To conclude otherwise on these facts would be to decide that an officer in Officer Takamiya's shoes, when confronted with a driver who has been stopped repeatedly in recent weeks for driving without a valid license or insurance and who is driving again, must ignore "'recent relevant criminal conduct,'" Kaleohano, 99 Hawai'i at 380, 56 P.3d at 148 (quoting Feliciano, 45 F.3d at 1074), and, instead, "shrug his shoulders and allow a crime to occur," id., at 380, 56 P.3d at 148 (quoting Adams, 407 U.S. at 145).

IV. CONCLUSION

In light of the foregoing reasoning, we affirm the ICA's April 24, 2007 judgment on appeal.

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