

NO. 22741

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
JOHN WESLEY EDWARDS III, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(CR. NO. TD10A OF 7/16/99/HPD NO. 99106476)

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant John Wesley Edwards III (Edwards) appeals the July 16, 1999 judgment of the District Court of the First Circuit convicting him of Driving Under the Influence of Intoxicating Liquor (DUI), Hawai'i Revised Statutes (HRS) § 291-4(a)(1) (Supp. 1999).<sup>1</sup> More specifically, Edwards appeals the July 16, 1999 denial of his July 16, 1999 oral motion to suppress evidence obtained from an illegal stop (July 16, 1999 oral M/S).

We affirm the July 16, 1999 denial and the July 16, 1999 judgment.

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<sup>1</sup> Hawai'i Revised Statutes (HRS) § 291-4(a)(1) (Supp. 1999) provides, in relevant part, as follows:

A person commits the offense of driving under the influence of alcohol if: . . . [t]he person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of liquor in an amount sufficient to impair the person's normal mental facilities or ability to care for oneself and guard against casualty[.]

## BACKGROUND

On March 27, 1999, at approximately 3:50 a.m., Officer Timothy Ryan (Officer Ryan) was on uniformed patrol in the Wai-kīkī area. As Officer Ryan traveled westbound on Ala Wai Boulevard in a GO-4 three-wheeled patrol vehicle, he observed Edwards' vehicle pull out from the parked vehicle lane. Edwards' vehicle was approximately eight to ten car lengths ahead Officer Ryan's vehicle. While traveling at approximately 35 to 38 miles per hour, Officer Ryan noticed that Edwards' vehicle was rapidly accelerating away from him. The posted speed limit in the area is 35 miles per hour. On the morning in question, the roads were wet.

Officer Ryan attempted to catch up to Edwards in order to establish Edwards' approximate rate of speed. Upon reaching his vehicle's top rate of speed of approximately 47 miles per hour, Officer Ryan observed that he began to fall further behind Edwards' vehicle. Based on his observations, Officer Ryan ascertained that Edwards was exceeding the 35-mile-per-hour speed limit. Though Officer Ryan had knowledge that his own vehicle's speedometer was not calibrated, he decided to stop Edwards for the speeding violation. Officer Ryan then activated his blue warning lights and pulled Edwards' vehicle over on the right-hand lane of Ala Wai Boulevard. Though Officer Ryan believed Edwards

was speeding, he did not believe a court would convict Edwards for speeding without a reading from a calibrated speedometer.<sup>2</sup>

Edwards testified that he did not believe he was speeding due to the fact that he was in the process of searching for a parking place.

After the initial stop, Officer Ryan had sufficient cause to request a field sobriety test. Based on the results of the field sobriety test, Officer Ryan had sufficient probable cause to arrest Edwards. The blood-alcohol level of Edwards was later revealed to be over twice the legal limit.

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<sup>2</sup> Upon questioning by the court, Police Officer Timothy Ryan testified, in relevant part, as follows:

Q (By Court) What was your objective in stopping his vehicle?

A Well, first of all to establish why he was speeding on a night like it was, the roadways being as wet as they were.

Q (By Court) In other words you were just curious or was it your intention to cite him?

A I wouldn't be able to cite him, Your Honor. I didn't have a speed check for the vehicle.

Q (By Court) I understand that so my question is why did you stop him if you can't cite him?

A Traffic enforcement in an effort to reduce traffic violations and a number of accidents out there.

THE COURT: Okay, the Court's a little confused. So you're telling me that if you stop people even if you don't have any reasonable suspicion that they have violated the law?

A Oh, I had more than reasonable grounds. I was -- there was no doubt in my mind that he was speeding.

Q (By Court) But you can't cite him?

A Yes sir. Maybe I can -- I could cite him but I don't believe the Court would accept it without a speed check.

On July 16, 1999, Edwards appeared for a bench trial on the charge of DUI in violation of HRS § 291-4. During a pretrial conference conducted off the record, the parties narrowed the contested issue in the case to the legality of the stop of Edwards' vehicle by Officer Ryan. The parties and the court agreed that the case would most efficiently be resolved by consolidating a hearing on Edwards' July 16, 1999 oral M/S with a stipulated facts trial.

Following testimony from Officer Ryan and Edwards, the court denied the July 16, 1999 oral M/S. The remainder of the case was the following stipulated facts: (1) After the initial stop, Officer Ryan had sufficient cause to request a field sobriety test; (2) based upon the results of the field sobriety test, Officer Ryan had probable cause to arrest Edwards; (3) the breath test administered to Edwards was conducted properly; and (4) Edwards' breath test resulted in a reading of .162, twice the legal limit.

The court found Edwards guilty of the charged offense. Edwards' driver's license was suspended for one year. Additionally, Edwards was sentenced to 100 hours of community service and was ordered to pay a \$500 fine. The court's denial of the July 16, 1999 oral M/S is the sole basis for this appeal.

## POINT ON APPEAL

Edwards contends that Officer Ryan lacked reasonable suspicion to stop him for speeding, the evidence of guilt was obtained during the illegal stop, and the court reversibly erred when it entered its (1) July 16, 1999 order denying the July 16, 1999 oral M/S and (2) July 16, 1999 judgment.

## STANDARD OF REVIEW

"We review the circuit court's ruling on a motion to suppress de novo to determine whether the ruling was 'right' or 'wrong.'" State v. Kauhi, 86 Hawai'i 195, 197, 948 P.2d 1036, 1038 (1997) (citing State v. Navas, 81 Hawai'i 113, 123, 913 P.2d 39, 49 (1996)).

## DISCUSSION

The stopping of an automobile and detention of its occupants constitutes a "seizure" within the meaning of the Fourth and Fourteenth Amendments of the United States Constitution. Delaware v. Prouse, 440 U.S. 648 (1979); State v. Wyatt, 67 Haw. 293 (1984).

The Fourth Amendment 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.

Article I, section 7, of the Hawai'i State Constitution provides:

The 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; and no warrants shall issue but upon probable cause, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

The protections afforded under Article I, section 7, of the Hawai'i State Constitution have been extended beyond those available under the Fourth Amendment "when logic and a sound regard for the purposes of those protections have so warranted." State v. Kachanian, 78 Hawai'i 475, 480, 896 P.2d 931, 936 (1996).

Any warrantless search or seizure is presumed to be unreasonable, invalid, and unconstitutional. The burden rests on Plaintiff-Appellee State of Hawai'i to prove that the warrantless search or seizure falls within a specifically established and well-delineated exception to the warrant requirement. State v. Ortiz, 67 Haw. 181, 683 P.2d 822 (1984). The result of a failure to meet this burden is that the evidence gathered from the illegal search will be suppressed as "tainted fruits of the poisonous tree." State v. Moore, 66 Haw. 606, 659 P.2d 70 (1983).

In appropriate circumstances, a police officer may stop a person for investigative purposes even though there is no probable cause to make an arrest. State v. Silva, 91 Hawai'i 80,

979 P.2d 1106 (1999). To justify an investigative stop, 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, [an officer] of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate.

State v. Bolosan, 78 Hawai'i 86, 92, 890 P.2d 673, 679 (1995).

In the instant case, the question is whether the Bolosan requirements were satisfied. Specifically, the question is whether Officer Ryan was entitled to stop Edwards in spite of his uncalibrated speedometer and his reasonable belief that, under the circumstances, a speeding citation would not "stand up in court." The answer is yes.

Officer Ryan was in possession of facts that would lead a reasonable officer to believe that criminal activity was afoot, specifically a violation of HRS § 291C-102.<sup>3</sup> Officer Ryan's speedometer was not calibrated to provide an exact reading of Edwards' speed. However, the fact remains that Officer Ryan sped his vehicle to its maximum speed of approximately 47 miles per hour in an attempt to gauge Edwards' speed, only to have Edwards continue to accelerate away from him. While this fails to provide an indication of the exact speed involved, the fact that

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<sup>3</sup> HRS § 291C-102(a) provides, in relevant part, that "[n]o person shall drive a vehicle at a speed greater than a maximum speed limit[.]"

Edwards continued to accelerate away, despite Officer Ryan's rate of speed being nearly 12 miles per hour in excess of the posted speed limit, would lead a reasonable officer to believe that Edwards was in violation of HRS § 291C-102.

The State of Hawai'i has a recognized interest in promoting the safe use of its streets and highways. State v. Powell, 61 Haw. 316, 603 P.2d 143 (1979). Inseparable from this function is a police officer's ability to temporarily detain a motorist in order to warn or advise against criminal wrongdoing, despite the officer's decision not to cite an offending motorist.

The Bolosan standard requires an objective belief that criminal activity be afoot and that the action taken is appropriate. An officer's failure to issue a citation is "of no consequence" in determining an officer's reasonable suspicion to conduct a stop. Hicks v. State, 472 S.E.2d 474, 477, 221 Ga.App. 735, 739 (1996). Equally insignificant is an eventual acquittal on an underlying traffic offense. Id. Accordingly, Officer Ryan's belief that he could not cite Edwards, or if he did, the citation would not "stand up in court," is inconsequential.

#### CONCLUSION

Accordingly, we affirm the July 16, 1999 denial of the July 16, 1999 oral motion to suppress evidence obtained from an



illegal stop and the July 16, 1999 judgment convicting Defendant-Appellant John Wesley Edwards III of Driving Under the Influence of Intoxicating Liquor, HRS § 291-4(a)(1) (Supp. 1999).

DATED: Honolulu, Hawai'i, January 23, 2001.

On the briefs:

Matthew A. Horn  
for Defendant-Appellant. Chief Judge

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Associate Judge