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SCWC-19-0000504

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Petitioner/Plaintiff-Appellant,

vs.

JERAMY M. TRONSON, Respondent/Defendant-Appellee.

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-19-0000504; CASE NO. 1DTA-19-00119)

DISSENT BY WILSON, J.,  
WITH WHOM MCKENNA, J., JOINS

I respectfully dissent to the Majority's holding that Jeramy M. Tronson ("Tronson") was not in custody at the time he was asked the medical rule-out questions.

**I. Tronson was in custody at the time of the medical rule-out questions because the officer had probable cause to arrest him for reckless driving**

As stated in my omnibus dissent to State v. Sagapolutele-Silva, SCWC-19-0000491, 151 Hawai'i 283, 511 P.3d 782 (2022), State v. Skapinok, SCWC-19-0000476, 511 Hawai'i 170, 510 P.3d 599 (2022) and State v. Manion, SCWC-19-0000476, 151 Hawai'i 267, 511 P.3d 766 (2022), I respectfully but strongly

disagree with the Majority's rejection of settled precedent supporting the precept that people in Hawai'i who are subject to arrest are necessarily in custody and are protected by the right against self-incrimination. Rather than depart from heretofore unquestioned precedent, I would affirm the common-sense ruling of the District Court of the First Circuit ("district court") that a person is in custody, and thus constitutionally entitled to be free from police interrogation, when the police have probable cause to arrest. See, e.g., State v. Ketchum, 97 Hawai'i 107, 34 P.3d 1006 (2001).

Contrary to the finding of the Majority, both the Intermediate Court of Appeals ("ICA") and the district court correctly held that Tronson was in custody at the time he was asked the medical-rule out questions. The uncontradicted testimony of Officer Tyler Maalo ("Officer Maalo") was that he had probable cause to arrest Tronson and he was in custody. Officer Maalo pulled Tronson over at approximately 3:30 A.M. after observing Tronson speeding, swerving around and almost hitting Officer Maalo's patrol car. Upon pulling Tronson over, Officer Maalo informed Tronson that he stopped him for "almost hitting [Officer Maalo's] vehicle." In response, Tronson apologized for almost hitting Officer Maalo's vehicle. From the point at which Officer Maalo approached Tronson—at 3:30 A.M., after witnessing Tronson commit a crime—Officer Maalo testified

that Tronson was not free to leave the scene. Officer Maalo testified that from the time he began engaging with Tronson, he had probable cause to arrest Tronson for reckless driving, a petty misdemeanor punishable by imprisonment.

While speaking with Tronson, Officer Maalo noted that Tronson's eyes were red and glassy, his speech was slurred, and his breath smelled like alcohol. Thereafter, Officer Maalo asked Tronson to step out of his vehicle and Tronson complied. Officer Maalo asked Tronson if he was willing to participate in a standardized field sobriety test ("SFST") and Tronson agreed. Prior to administering the SFST, Officer Maalo asked Tronson the following medical rule-out questions:

- i. Do you have any physical defects or speech impediments?
- ii. Are you taking any medications?
- iii. Are you under the care of a doctor or dentist for anything?
- iv. Are you under the care of an eye doctor?
- v. Do you have an artificial or glass eye?
- vi. Are you epileptic or diabetic?
- vii. Are you blind in either eye?
- viii. Do you wear corrective lenses?

Tronson answered no to all of the questions.

Tronson was in custody at the time of the medical rule-out questions. The circumstances of this stop were such that a reasonable person would believe "that he or she was not free to go[,]" as evidenced by the sensible sworn testimony of Officer Maalo at the hearing on the motion to suppress that Tronson was indeed, not free to leave. Ketchum, 97 Hawai'i at 125, 34 P.3d at 1024. Tronson was pulled over by Officer Maalo

at 3:30 A.M. and immediately told that the reason for the stop was because he nearly hit a police car. Moreover, Officer Maalo testified to having probable cause to arrest Tronson for reckless driving from the moment he initiated the stop. As this court stated in State v. Ah Loo, "if the detained person's responses to a police officer's questions provide the officer with probable cause to arrest . . . the officer is—at that time—required to inform the detained person of his or her constitutional rights against self-incrimination and to counsel, as mandated by Miranda and its progeny." 94 Hawai'i 207, 212, 10 P.3d 728, 733 (2000) (citations omitted). Here, Tronson's actions (speeding, swerving, almost hitting a police car, and later apologizing for almost hitting the police car) supported Officer Maalo's conclusion that he had probable cause to arrest Tronson for reckless driving.

In sum, Tronson was in custody because (1) Officer Maalo had probable cause to arrest Tronson for reckless driving, see Ketchum, 97 Hawai'i at 126, 34 P.3d at 1025 ("a person is in custody . . . if an objective assessment of the totality of the circumstances reflects that . . . probable cause to arrest has developed") (citations omitted); and (2) a reasonable person in Tronson's situation—after being pulled over at 3:30 A.M., being told that they almost collided with a police car, and being asked to step out of their vehicle and participate in a SFST—

would believe that they implicated themselves in reckless driving and OVUII crimes, and were therefore, not free to leave. State v. Kauhi, 86 Hawai'i 195, 203, 948 P.2d 1036, 1044 (1997) ("Generally, a person is 'seized' if, 'from an objective standpoint and given the totality of the circumstances, a reasonable person would have believed that he or she was not free to leave.'" (citations and quotations omitted)).<sup>1</sup>

**II. The medical-rule out questions constitute interrogation because they are reasonably likely to elicit an incriminating response**

Because Tronson was in custody, it must be determined whether the medical rule-out questions constitute interrogation. State v. Joseph, 109 Hawai'i 482, 493-94, 128 P.2d 795, 806-07 (2006); State v. Tringue, 140 Hawai'i 269, 277, 400 P.3d 470, 478 (2017) (explaining that the two triggers for the Miranda requirement are "custody" and "interrogation"). The district court and the ICA correctly concluded that the medical rule-out questions constitute interrogation, and thus, suppressed Tronson's answers to the medical rule-out questions because the

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<sup>1</sup> The fact that upon Tronson's apologizing for almost hitting Officer Maalo's car, Officer Maalo observed the odor of alcohol coming from Tronson, and that Tronson had red and glassy eyes compounds the fact that a reasonable person in Tronson's position would not have felt free to leave. At this point, not only did Officer Maalo have probable cause to arrest Tronson for reckless driving, but Officer Maalo also had reasonable suspicion that Tronson was driving while intoxicated. A reasonable person, after being informed they were pulled over for almost hitting a police car, and exhibiting signs of intoxication, would certainly not feel free to drive away from the officer.

failure to provide him with Miranda warnings violated his constitutional right against self-incrimination.

The touchstone of interrogation is “whether the police officer should have known that [their] words or actions were reasonably likely to elicit an incriminating response from the [d]efendant.” State v. Kazanas, 138 Hawai‘i 23, 37, 375 P.3d 1261, 1275 (2016) (citations omitted). An incriminating response refers to both inculpatory and exculpatory responses. State v. Eli, 126 Hawai‘i 510, 522, 273 P.3d 1196, 1208 (2012) (citing Joseph, 109 Hawai‘i at 495, 128 P.3d at 808)). Here, Officer Maalo should have—and did—know that the medical rule-out questions were reasonably likely to elicit an incriminating response from Tronson. Officer Maalo testified that the purpose of the medical rule-out questions is to determine if there are any “variables that might affect [the officer’s] evaluation” of a suspect’s performance on the SFST. That is, Officer Maalo testified that because Tronson answered no to all of the medical rule-out questions, he was able to “rule out any medical variables” that might have affected Tronson’s performance on the SFST. Thus, Tronson’s responses to the medical rule-out questions were inculpatory in that they allowed Officer Maalo to focus on the results of the SFST as caused by intoxication alone. Relatedly, one of the medical rule-out questions asks if the suspect is taking any medication. Officer Maalo testified

that if a suspect responds that they are taking a medication that may cause impairment, that would contribute to his OVUII investigation. Accordingly, because the medical rule-out questions are reasonably likely to elicit an incriminating response, they constitute interrogation. Therefore, if a suspect is in custody, as was Tronson, the medical rule-out questions must be preceded by Miranda warnings in order to be admissible.<sup>2</sup>

### III. Conclusion

For the foregoing reasons, I dissent to the Majority's decision to vacate the ICA's July 31, 2020 judgment on appeal and the district court's May 9, 2019 judgment.

DATED: Honolulu, Hawai'i, November 9, 2022.

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson



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<sup>2</sup> Because it was not raised on certiorari, this dissent does not address the validity of the ICA's decision to vacate the district court's suppression of Tronson's other statements (including Tronson's apology after being informed of the reason why he was stopped, Tronson's answers to whether he would participate in the SFST and whether he understood the SFST instructions as well as Tronson's performance on the SFST).