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IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII,
Respondent/Plaintiff-Appellee,

vs.

CYRINA L. HEWITT,
Petitioner/Defendant-Appellant.

SCWC-16-0000460

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000460; CASE NO. 3DTA-15-00745)

MARCH 15, 2023

DISSENTING OPINION BY NAKAYAMA, J.,
WITH WHOM RECKTENWALD, C.J., JOINS

In this case, an unknown male dropped off Cyrina Hewitt (Hewitt) at Kona Community Hospital. Then, Hawaii Police Department (HPD) officers were called to the hospital by emergency room staff to investigate Hewitt as an assault victim. The officers first encountered Hewitt in a hospital room at approximately 1:00 a.m. Due to her injuries, the officers attempted to determine if Hewitt was an assault victim. A fire

paramedic then told the officers about a vehicle on the roadside. The officers left the hospital room and terminated the initial interview with Hewitt. The officers then learned that an unoccupied truck, which contained Hewitt's identification card, had been located. The officers returned to the hospital room for a second interview and asked Hewitt whether she had been in a traffic accident. Hewitt answered in the affirmative and the officers arrested Hewitt for suspicion of Operating a Vehicle Under the Influence of an Intoxicant (OVUII). The officers did not provide Hewitt with Miranda warnings before she was arrested.

The majority concludes that when

probable cause to arrest Hewitt had developed, which was at least by the time officers learned the trucked owned by "Cyrus Hewitt" crashed on the roadside contained Hewitt's identification card, she was entitled to Miranda warnings before questioning recommenced. For the reasons discussed below, however, Hewitt was in custody under a totality of circumstances and entitled to Miranda warnings even before that point in time.

Based on the totality of the circumstances, I do not believe Hewitt was "in custody . . . before that point in time." Here, HPD officers responded to a request from emergency room staff to investigate Hewitt as an assault victim and not as a suspect in any crime. Moreover, officers should not be discouraged from investigating when they learn about a victim of an assault and receive a request to investigate. Accordingly, I respectfully dissent.

I. BACKGROUND

A. Factual Background¹

1. Vehicle collision

On July 2, 2014, police officers were informed that someone heard a possible traffic collision, which occurred at approximately 11:00 p.m. Officer Kaea Sugata (Officer Sugata) investigated the report but "didn't see anything."

2. Initial interview

On July 3, 2014, Officer Chandler Nacino (Officer Nacino) and Officer Sugata were called to Kona Community Hospital by emergency room staff to investigate a patient who appeared to have been assaulted. An unknown male had dropped off Hewitt at the hospital's emergency room. The unknown male did not stay at the hospital.

Officers Nacino and Sugata arrived at the hospital and approached Hewitt at around 1:00 a.m. Officer Nacino found Hewitt with "large amounts of swelling to her face and . . . a laceration to her ear." Officer Sugata similarly described that Hewitt "had pretty significant injuries to the head. She had closed . . . black eyes, closed eyes; scratches; dirty; and had . . . leaves and stuff in her -- on her person."

¹ That facts are recounted in greater detail in this court's majority opinion.

Officer Nacino testified that during the initial interview, he specifically asked Hewitt if she had been assaulted. Officer Nacino explained that Hewitt provided "incoherent answers like, you know, that she's a big girl, she can handle her stuff." Based upon Hewitt's response, Officer Nacino attempted "to figure out who she'd been assaulted by." Officer Nacino suspected that Hewitt was under the influence of alcohol or an intoxicant.

Officer Sugata similarly testified that he "conduct[ed] an investigation relative to an assault." Officer Sugata noted that Hewitt "appeared to have injuries which could have been from an assault." Officer Sugata also testified he began to believe that Hewitt sustained her injuries as a driver in a traffic collision because "[s]he made statements stating that she was driving [a] vehicle" when responding "to questions about her being assaulted."

3. Investigation between interviews

At some point, "a fire paramedic" (paramedic) was walking by and asked the officers "what was going on." The officers told the paramedic that they received a call about an assault. The paramedic told the officers that "he'd seen a

[vehicle] on the shoulder of the roadway as he was coming up to the hospital."²

After learning about the vehicle on the roadway, Officers Nacino and Sugata asked Sergeant Mekia Rose (Sergeant Rose) to look for and inspect the traffic collision identified by the paramedic. Around this time, Officers Nacino and Sugata terminated the initial interview.

Sergeant Rose found a Nissan pickup truck, license plate HJD 281, on Kuakini Highway by Lako Street. Sergeant Rose observed front-end damage to the vehicle and found "a driver's license belonging to a Cyrina Hewitt" inside of the vehicle. Sergeant Rose subsequently sent Officers Nacino and Sugata a photo of the license via text message. Officers Nacino and Sugata confirmed that the person depicted in the license matched Hewitt at the hospital.

4. Second interview

After communicating with Sergeant Rose, Officers Nacino and Sugata initiated a second interview with Hewitt. Officer Nacino testified that, during the second interview, he

² The same person informed both officers that Hewitt was "involved in a traffic collision." Officer Sugata explained that the officers learned that Hewitt may have been involved in a traffic collision from a "Hawaii Fire Department personnel member," and Officer Nacino explained the officers learned that same information from "a fire paramedic." For purposes of this dissent, it is assumed that Officer Sugata's "Hawaii Fire Department personnel member" is the same as Officer Nacino's "fire paramedic."

asked Hewitt "if she had been in a traffic accident."³ Hewitt "informed [Officer Nacino] that she was driving the vehicle and had parked it there." Officer Nacino stopped asking Hewitt questions, arrested Hewitt for OVUII, and ordered a blood draw.

II. DISCUSSION

A. Applicable law and relevant precedent.

In evaluating whether an interrogation is custodial, a court must consider "the totality of the circumstances, focusing on 'the place and time of the interrogation, the length of the interrogation, the nature of the questions asked, the conduct of the police, and [any] other relevant circumstances[.]'" State v. Loo, 94 Hawai'i 207, 210, 10 P.3d 728, 731 (2000) (quoting State v. Melemai, 64 Haw. 479, 481, 643 P.2d 541, 544 (1982)) (brackets in original).

Among the relevant circumstances to be considered are whether the investigation has focused on the suspect and whether the police have probable cause to arrest him prior to questioning. While focus of the investigation upon the defendant, standing alone, will not trigger the application of the Miranda rule, it is an important factor in determining whether the defendant was subjected to custodial interrogation. State v. Patterson, [59 Haw. 357, 361, 581 P.2d 752, 755 (1978)], State v. Kalai, [56 Haw. 366, 369, 537 P.2d 8, 11 (1975)]. Probable cause to arrest is also not determinative, but it may play a significant role in the application of the Miranda rule. [Patterson, 59 Haw. at 361, 581 P.2d at 755]; People v. Diego, 121 Cal.App.3d 777, 175 Cal.Rptr. 553, 555-56 (1981).

Melemai, 64. Haw. at 481, 643 P.2d at 544. This court explained that probable cause is a relevant factor because, "[w]here the

³ During the motion to suppress hearing, Officer Nacino testified that he asked Hewitt "if she was driving."

police, prior to questioning the individual, are in possession of facts sufficient to effect an arrest without a warrant based upon probable cause, it is less likely that the person confronted would be allowed to come and go as he pleases."

Patterson, 59 Haw. at 361, 581 P.2d at 755.

Melemai is illustrative of when a police interview becomes "custodial." There, a police officer learned about the hit and run of a jogger, and witnesses provided police with the fleeing vehicle's license plate information. Melemai, 64 Haw. at 480, 643 P.2d at 543. Using the license plate information, the officer identified the defendant as the vehicle's registered owner and found his address. Id. The officer drove to the defendant's address to wait for the defendant. Id. When the defendant arrived, the officer confronted the defendant and asked (1) whether the defendant had hit anyone with his car, and (2) why the defendant drove away. Id.

This court held that Melemai was not in custody until after Melemai answered the first question in the affirmative. Id. at 482, 643 P.2d at 544. The court based this distinction on the fact that it was not until after Melemai admitted to hitting the jogger that the officer "had reasonable grounds to believe, from facts and circumstances personally known to him, or of which he had trustworthy information, that the person arrested has committed or is committing an offense." Id. at 482

n.4, 643 P.2d at 544 n.4 (citing State v. Lloyd, 61 Haw. 505, 606 P.2d 913 (1980)).

B. The initial interview was not custodial.

The majority concludes that "under the totality of circumstances, Hewitt was in custody and entitled to Miranda warnings well before the officers asked her whether she had been driving the truck." I respectfully disagree because the officers were called to Kona Community Hospital by emergency room staff to investigate Hewitt as an assault victim, and the officers did not ask Hewitt if she had been in a traffic collision until the second interview. In addition, police officers should not be discouraged from investigating a possible assault when they are called to do so. Thus, I would hold that the totality of the circumstances demonstrate Hewitt was not "in custody" during the initial interview.

Focusing on the "relevant circumstances" identified in Melemai, neither Officer Nacino nor Officer Sugata initially considered Hewitt to be an OVUII suspect, nor did police possess probable cause to suspect Hewitt of OVUII during the initial interview. Turning first to the officers' investigation, the officers were not investigating Hewitt as a suspect for OVUII during the initial interview. Instead, both officers testified that they were called to Kona Community Hospital to investigate an assault. There, the officers initially asked Hewitt if she

had been assaulted and who she was assaulted by. It was only after the officers' initial questioning that Officer Sugata began to suspect Hewitt may have been injured in a traffic collision. Thus, unlike the officer in Melemai, who specifically approached Melemai to investigate the hit and run, the officers did not interview Hewitt for the purpose of investigating either a traffic collision or OVUII.

In addition, Officer Nacino testified that he believed Hewitt sustained her injuries during an assault. Officer Sugata also initially suspected that Hewitt was assaulted. Notably, the officers had no reason to suspect Hewitt of committing any crime when they first encountered Hewitt because the officers only knew that they were called by the hospital to investigate an assault and the potential victim was dropped off by an unknown male. Thus, just like with the officer's first question in Melemai, Officers Nacino and Sugata lacked probable cause to believe that Hewitt had committed a crime when they initiated the interview.

Moreover, the circumstances indicate that the interview was more akin to general fact-finding. See Melemai, 64. Haw. at 481-82, 643 P.2d at 544 (noting that Miranda does not preclude officers from "making general on-the-scene inquiries as to facts surrounding a crime or other general questions in the fact-finding process" (citing Patterson, 59

Haw. at 361-62, 581 P.2d at 755)). Although the time and place of the initial interview may be considered atypical - 1:00 a.m. while Hewitt was sitting in a hospital bed - it is reasonable for police to begin their investigation as soon as they are called to do so. Meanwhile, there is no indication in the record of how long the initial interview took. Based on the officers' testimony, the questions during the initial interview were general investigative questions for determining how Hewitt became injured.

Under these circumstances, Hewitt was not "in custody" during the initial interview. See Melemai, 64 Haw. at 482, 643 P.2d at 544.

III. CONCLUSION

In light of the foregoing, Hewitt was not "in custody" during the initial interview. Accordingly, I would hold that the statements made by Hewitt during the initial interview are admissible absent Miranda warnings.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

