

NO. 24199

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

MICHAEL JOHN CORCORAN, Petitioner-Appellant, v.
ADMINISTRATIVE DIRECTOR OF THE COURTS, STATE OF HAWAI'I,
Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
WAILUKU DIVISION
(Case No. JR01-1(W))

MEMORANDUM OPINION

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

Petitioner-Appellant Michael John Corcoran (Corcoran) appeals the Decision and Order Affirming Administrative Revocation, entered by the District Court of the Second Circuit^{1/} (the district court) on March 28, 2001, which affirmed the January 10, 2001 Findings of Fact, Conclusions of Law, and Decision of Respondent-Appellee Administrative Director of the Courts, State of Hawai'i (the Director), which administratively revoked Corcoran's driver's license. We affirm.

BACKGROUND

It is undisputed that at about 2:45 a.m. on November 4, 2000, Police Officer Mark Hada (Officer Hada) saw Corcoran asleep

^{1/} The Honorable Paul Horikawa entered the Decision and Order Affirming Administrative Revocation.

in the driver's seat of a car, which was parked in a municipal parking lot behind the Stopwatch Restaurant (the Stopwatch) in Makawao Town, Maui, where Corcoran had spent the evening drinking liquor and dancing. Officer Hada awakened Corcoran and informed him that he was not allowed to sleep in the parking lot and would be arrested if he did not leave. Officer Hada, detecting a strong odor of liquor on Corcoran's breath, asked Corcoran if there was anyone he could call to pick him up, since he was not allowed to sleep there and was not in any condition to drive. When Corcoran replied that he had no one to call, Officer Hada asked Corcoran to lock up his vehicle and leave the area. Officer Hada also cautioned Corcoran, who was obviously intoxicated, against driving his vehicle. After observing Corcoran exit his vehicle and walk unsteadily toward the Stopwatch, Officer Hada continued his patrol of Makawao. At about 2:55 a.m., Officer Hada saw Corcoran's vehicle exit the municipal parking lot, travel onto the roadway, cross the double solid yellow lane markings twice, then turn, screeching, into the Stopwatch parking lot. Officer Hada subsequently arrested Corcoran for, among other offenses, driving under the influence of intoxicating liquor (DUI). At the police station, Corcoran chose to take a breath alcohol concentration test, which confirmed that he had a blood alcohol level above the legal limit. In accordance with Hawaii Revised Statutes (HRS)

§ 286-255 (1993 & Supp. 2000),^{2/} Officer Hada then confiscated

^{2/} Hawaii Revised Statutes (HRS) § 286-255 (1993), which was repealed and replaced effective January 1, 2002, provided, in relevant part, as follows:

Arrest; procedures. (a) Whenever a person is arrested for a violation of section 291-4 or 291-4.4, on a determination by the arresting officer that:

- (1) There was reasonable suspicion to stop the motor vehicle, or that the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6; and
- (2) There was probable cause to believe that the arrestee was driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;

the arresting officer immediately shall take possession of any license held by the person and request the arrestee to take a test for alcohol concentration. The arresting officer shall inform the person that the person has the option to take a breath test, a blood test, or both. The arresting officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath or a blood test. Thereafter, the arresting officer shall complete and issue to the arrestee a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary driver's permit. The notice shall serve as a temporary driver's permit, unless, at the time of arrest, the arrestee was unlicensed, the arrestee's license was revoked or suspended, or the arrestee had no license in the arrestee's possession.

(b) Whenever the police determine that, as the result of a blood test performed pursuant to section 286-163(b) and (c), there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291-4 or 291-4.4, the police shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary driver's permit. The notice shall serve as a temporary driver's permit unless, at the time the notice was issued, the person was unlicensed, the person's license was revoked or suspended, or the person had

(continued...)

Corcoran's driver's license and issued Corcoran a Notice of Administrative Revocation, which served as Corcoran's temporary driver's license for thirty days, and informed Corcoran of the administrative process for seeking review of the proposed revocation of his driver's license.

Corcoran concedes that he drove under the influence of intoxicating liquor on the morning of November 4, 2000. However, he argues that under the choice-of-evils defense set out in HRS § 703-302 (1993), he was justified in driving the short distance from the municipal parking lot to the private Stopwatch parking lot in order to sleep off his intoxication and thereby avoid being arrested for sleeping in his car in a public parking lot, in violation of HRS § 291C-112(c) (1993),^{3/} or risking injury by

^{2/}(...continued)

no license in the person's possession.

(c) Whenever an arrestee under this section is a repeat intoxicated driver, the arresting officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the arrestee is registered to the arrestee, remove the license plates and issue a temporary motor vehicle registration and temporary license plates for the motor vehicle. No temporary motor vehicle registration and license plates shall be issued if the arrestee's registration has expired or been revoked. The appropriate police department, upon determining that the arrestee is a repeat intoxicated driver, shall notify the appropriate county director of finance to enter a stopper on the motor vehicle registration files to prevent the arrestee from conducting any motor vehicle transactions, except as permitted under this part.

^{3/} HRS § 291C-112 (1993) provides:

(continued...)

embarking on a five-mile hazardous upcountry walk to his residence in the dark.

In rejecting Corcoran's choice-of-evils defense, the Director, through an administrative hearings officer, determined that the defense, which is codified in the Hawai'i Penal Code, is not available in a civil administrative hearing. The Director

^{2/}(...continued)

Certain uses of parked vehicles prohibited between 6:00 p.m. and 6:00 a.m.; definition; exceptions. (a) No person shall use any vehicle for purposes of human habitation, whether or not the vehicle is designed or equipped for that purpose, while the vehicle is parked on any roadway, street, or highway or other public property between the hours of 6:00 p.m. and 6:00 a.m. or while the vehicle is parked on private property without authorization of the owner or occupant authorizing both the parking of the vehicle there and its use for purposes of human habitation.

(b) As used in this section "purposes of human habitation" includes use as a dwelling place, living abode, or sleeping place.

(c) This section does not apply to the parking of vehicles and their use for purposes of human habitation in parks, camps, and other recreational areas in compliance with law and applicable rules and regulations, or under emergency conditions in the interest of vehicular safety.

(d) The department of health shall promulgate rules and regulations, pursuant to chapter 91, necessary for the administration of this section.

In State v. Sturch, 82 Hawai'i 269, 275, 921 P.2d 1170, 1176 (App. 1996), this court noted that the foregoing statute "plainly targets only activities associated with habitation" and would not apply "to a tired person asleep in his or her carseat or while the car is parked, the alternate long-distance driver asleep in a parked tractor-trailer, or the tired or inebriated driver who has taken widely disseminated good counsel and chosen to go to sleep in his or her parked car." Id. at 274 (internal brackets, dash, ellipses, and quotation marks omitted).

also concluded that even if the defense were potentially available to Corcoran,

[t]he choice of evils defense . . . does not apply when the actor is reckless or negligent in bringing about the situation requiring the defendant to make a choice. Based on the foregoing, any motion to reverse on this basis is denied.

The Director thus implicitly concluded that Corcoran was reckless or negligent in bringing about the dilemma presented by his intoxication.

DISCUSSION

The choice-of-evils defense is set forth in HRS § 703-302 (1993), which is part of the Hawai'i Penal Code and provides, in pertinent part, as follows:

Choice of evils. (1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor or to another is justifiable provided that:

- (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
- (b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- (c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for the actor's conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(Emphasis added.) The Supplemental Commentary on HRS § 703-302 observes:

The Legislature accepted § 302 of the Proposed Draft [of the Model Penal Code] without modification. Subsection (2) provides that the defense of justification based on a choice of evils is unavailable where recklessness or negligence suffices to establish culpability when the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for the actor's conduct. However, in light of the Legislature's introduction of the "reasonable man standard" in § 703-300, it appears that negligence on the actor's part in bringing about the situation or in appraising the necessity for the actor's conduct will be sufficient to eliminate the defense in cases which otherwise require intent, knowledge, or recklessness to establish culpability.

Thus, if Corcoran were found to be negligent either in "bringing about the situation requiring the choice of harms" or "in his appraisal of that situation," the HRS § 703-302 choice-of-evils defense, assuming it even applied in an administrative revocation of driver's license proceeding, would not be available to Corcoran. The Director, through an administrative hearings officer, essentially concluded that Corcoran had forfeited the choice of evils defense because it was his own negligence or reckless conduct that had placed him in the position of having to choose between evils.

Our review of the record indicates that Corcoran spent an evening drinking alcoholic beverages without making sure he had a safe ride home. Furthermore, once intoxicated, he made no effort to call a cab or friend to pick him up or find a safe place to spend the night before driving. We cannot conclude, in

light of these circumstances, that the Director's conclusion that Corcoran was reckless or negligent in bringing about the situation requiring him to make a choice of harms was erroneous.

Accordingly, we affirm the Decision and Order Affirming Administrative Revocation, as well as the Judgment on Appeal, both entered on March 28, 2001 by the district court, which, in turn, affirmed the Findings of Fact, Conclusions of Law, and Decision of the Director, entered on January 10, 2001.

DATED: Honolulu, Hawai'i, October 17, 2002.

On the briefs:

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