

NO. 23757

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
ROBERT WILLIAM K. MAHI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
KANEHOHE DIVISION  
(Traffic Nos. 99-290988 & 99-290990)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Robert William K. Mahi (Mahi) appeals from the Judgment entered October 13, 2003 in the District Court of the First Circuit, Kaneohe Division (district court). Following a bench trial,<sup>1</sup> Mahi was convicted of Driving Under the Influence of Drugs (DUI-Drugs), in violation of Hawaii Revised Statutes (HRS) § 291-7 (Supp. 2000).<sup>2</sup> The district court granted Mahi a conditional discharge as to the Promoting a

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<sup>1</sup> Per diem District Court Judge James H. Dannenberg presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 291-7 (Supp. 2000) provides in relevant part:

**§291-7 Driving under the influence of drugs.** (a) A person commits the offense of driving under the influence of drugs if the person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug which impairs the person's ability to operate the vehicle in a careful and prudent manner. The term "drug" as used in this section shall mean any controlled substance as defined and enumerated on schedules I through IV of chapter 329.

Detrimental Drug in the Third Degree<sup>3</sup> (HRS § 712-1249 (1993)<sup>4</sup>) charge.

On appeal, Mahi contends the district court erred in (1) denying the motion to suppress evidence; (2) finding sufficient evidence to sustain a conviction; (3) denying the Motion to Compel Disclosure; (4) denying the motion for reconsideration; (5) refusing to admit the MVSO Roadblock Report "B" as evidence; (6) denying a jury trial; and (7) refusing to grant a conditional discharge for the DUI-Drugs conviction. We disagree with Mahi's contentions and affirm the October 13, 2003 Judgment of the district court.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we resolve Mahi's points of error as follows:

(1) The district court properly denied Mahi's Motion to Suppress. The record indicates the roadblock was properly

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<sup>3</sup> Because Mahi was granted this conditional discharge on the promoting charge, absent an entry of a judgment of guilt in accordance with HRS § 712-1255, Mahi's conviction for the promoting charge is not appealable under HRS § 641-12 as an appeal from a final judgment. State v. Bikle, 60 Haw. 576, 592 P.2d 832 (1979).

<sup>4</sup> HRS § 712-1249 (1993) provides:

**§712-1249 Promoting a detrimental drug in the third degree.**

(1) A person commits the offense of promoting a detrimental drug in the third degree if the person knowingly possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.

authorized, established and conducted in compliance with HRS §§ 286-162.5 and 286-162.6 and Honolulu Police Department Rule 18 (Roadblock Procedures). State v. Fedak, 9 Haw. App. 98, 100-02, 825 P.2d 1068, 1070-71 (1992). There was probable cause for the conducting of the field sobriety test, search, and arrest because the record indicates that the facts and circumstances, within the officer's knowledge, were "sufficient in themselves to warrant a man of reasonable cause in the belief that a crime was being committed." State v. Haili, 63 Haw. 553, 555-56, 632 P.2d 1064, 1065 (1981).

(2) The record reflects that there was sufficient credible evidence of sufficient quality and probative value to enable a person of reasonable caution to conclude that Mahi was driving under the influence. State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996).

(3) Mahi's Motion to Compel Disclosure was properly denied as Mahi failed to show that the requested items were material and reasonable. State ex rel. Marsland v. Ames, 71 Haw. 304, 309, 788 P.2d 1281, 1284 (1990); Hawai'i Rules of Penal Procedure (HRPP) Rule 16.

(4) Mahi's Motion for Reconsideration of Denial of Motion to Compel Regarding Certain Requests was properly denied because Mahi presented no new evidence or arguments that rendered

the earlier adjudication invalid. Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 27 (1992).

(5) The MVSO report was properly excluded as untrustworthy hearsay pursuant to Hawaii Rules of Evidence (HRE) Rules 801 and 802 and failed to meet the HRE Rules 803(a)(1), 803(b)(8), and 804(b)(7) exceptions.

(6) As a first time DUI-drug offender under HRS § 291-7 Mahi was not entitled to a jury trial. State v. Sullivan, 97 Hawai'i 259, 36 P.3d 803 (2001).

(7) Mahi's sentence under HRS § 291-7 did not constitute cruel and unusual punishment because HRS § 291-7 does not allow the court to grant a conditional discharge. State v. Melear, 63 Haw. 488, 500, 630 P.2d 619, 628 (1981).

Therefore,

We affirm the October 13, 2003 Judgment of the District Court of the First Circuit, Kaneohe Division.

DATED: Honolulu, Hawai'i, April 7, 2004.

On the briefs:

David W. Hall  
for defendant-appellant.

Chief Judge

Caroline M. Mee,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for plaintiff-appellee.

Associate Judge

Associate Judge