

NOT FOR PUBLICATION

NO. 25686

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

MICHAEL P. WILCOX, Petitioner-Appellant, v. THOMAS R.
KELLER,¹ ADMINISTRATIVE DIRECTOR OF THE COURTS, STATE
OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
NORTH AND SOUTH KONA DIVISION
(A.R. No. 02-0001KN)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant Michael P. Wilcox (Wilcox) appeals from the Decision and Order Affirming Administrative Revocation of his driver's license, entered on January 29, 2003 by the District Court of the Third Circuit, Joseph P. Florendo presiding. We affirm.

The administrative revocation proceeding against Wilcox stemmed from his July 19, 2002 arrest by Hawai'i County Police Officer Renee Morinaka (Officer Morinaka) for driving under the influence of intoxicating liquor. On September 26, 2002, prior to his administrative revocation hearing, rescheduled to October 4, 2002 at his request, Wilcox filed a request with the Administrative Drivers' License Revocation Office to have a

¹At the time this case arose, Michael F. Broderick was the Administrative Director of the Courts of the State of Hawai'i, the Respondent-Appellee in this appeal. Pursuant to Hawai'i Rules of Appellate Procedure Rule 43, relating to the substitution of parties, the current Administrative Director of the Courts, Thomas R. Keller, has been substituted as the named party to this case.

subpoena issued upon Officer Morinaka, compelling her attendance at the hearing. The request was approved and the subpoena was issued and mailed to Wilcox the very next day. However, Wilcox's process server, who did not attempt to serve Officer Morinaka until October 1, 2002, was unable to serve the subpoena because Officer Morinaka was on vacation for the month of October and the "Police Department will not contact or call her regarding subpoena." At the hearing, the hearings officer offered to continue the hearing due to Officer Morinaka's absence, but Wilcox rejected the offer.

Wilcox now contends that his due process rights were violated because the police department failed to affirmatively assist him in serving the subpoena upon Officer Morinaka. For the following reasons, we disagree with Wilcox.

First, Wilcox waived this argument by rejecting the hearings officer's offer to continue the hearing until Officer Morinaka could be present for cross-examination.²

Second, contrary to Wilcox's argument, there is absolutely no evidence that the police department's refusal to attempt to contact Officer Morinaka in order to effectuate

² Pursuant to Hawaii Revised Statutes § 291E-38(k) (Supp. 2003), "[t]he absence from the hearing of a law enforcement officer . . . , upon whom personal service of a subpoena has been made as set forth in subsection (h), constitutes good cause for a continuance." If the absence from a hearing of a law enforcement officer who was served with a subpoena constitutes good cause for a continuance, then surely the absence of Hawai'i County Police Officer Renee Morinaka (Officer Morinaka), who was not served with a subpoena, constituted good cause for a continuance. If Petitioner-Appellant Michael P. Wilcox wished to cross-examine Officer Morinaka, he could have agreed to the continuance of the hearing.

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service of a subpoena upon the officer during her vacation constituted obstruction of government operations, in violation of Hawaii Revised Statutes § 710-1010 (1993 & Supp. 2003), or tampering with a witness, in violation of HRS § 710-1072 (1993).

Third, we agree with the hearings officer that Wilcox's inability to serve a subpoena upon Officer Morinaka was caused partly by Wilcox's procrastination in requesting and serving the subpoena.

Fourth, the facts in Robison v. Administrative Director of the Courts, 93 Hawai'i 337, 3 P.3d 503 (App. 2000), upon which Wilcox relies, are markedly different from the facts in this case.

Accordingly, we affirm the Decision and Order Affirming Administrative Revocation, entered on January 29, 2003.

DATED: Honolulu, Hawai'i, October 27, 2004.

On the briefs:
Christopher J. Roehrig
(Roehrig, Roehrig, Wilson &
Hara) for petitioner-
appellant.

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general, State of Hawai'i, for
respondent-appellee.