

NO. 23876

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

BENJAMIN McCULLOCH, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NOS. TR60-61: 10/6/00 and TR41-42: 10/27/00)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

The defendant-appellant Benjamin McCulloch appeals from the judgment and sentence of the district court of the second circuit, the Honorable John T. Vail presiding, entered on October 6, 2000. Specifically, McCulloch argues: (1) that the district court erred in denying his motion to suppress the results of a blood sample drawn at the request of the police, on the bases that (a) the police lacked probable cause to believe that McCulloch was driving under the influence of intoxicating liquor (DUI) and (b) the police failed to provide him with his implied consent warnings pursuant to Hawai'i Revised Statutes (HRS) § 286-151 (Supp. 2000); and (2) that the district court erred in denying his motion for reconsideration, on the basis that HRS § 286-163 (Supp. 2000) violates the equal protection and due process clauses of the United States and Hawai'i Constitutions and is void for vagueness.

The prosecution argues: (1) that the police were not required to comply with the prerequisites to a blood test

pursuant to HRS § 286-151, because the blood test was authorized by HRS § 286-163; (2) that the police had probable cause to believe that McCulloch was DUI; and (3) that McCulloch's constitutional arguments are procedurally barred and, in any event, without merit.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we agree with the prosecution and affirm the district court's judgment and sentence.

First, given Officer Krau's testimony that he detected a distinct odor of liquor emanating from McCulloch and observed that his face was flushed and his eyes were bloodshot, as well as the fact that McCulloch was involved in a single-vehicle accident without apparent explanation, the circuit court did not err in determining that Officer Krau had probable cause to believe that McCulloch was DUI. See State v. Jenkins, 93 Hawai'i 87, 101-02, 997 P.2d 13, 27-28 (2000) ("Probable cause exists when the facts and circumstances within one's knowledge and of which one has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed.") ("an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the [trier of fact]") (citations omitted) (brackets in original)).

Second, in light of our recent decision in State v. Entrekin, No. 24278 (Haw. May 9, 2002), holding (1) that HRS § 286-163 authorizes the police to obtain a blood sample of a driver involved in a collision resulting in an injury to or the death of any person, including the driver and (2) that the police

are not required to comply with the prerequisites to a breath, blood, or urine test contained in HRS § 286-151 prior to obtaining a breath, blood, or urine sample pursuant to HRS § 286-163, we hold that McCulloch's blood sample was lawfully drawn.

Finally, assuming arguendo that McCulloch is not procedurally barred from raising his constitutional challenges on appeal, we find no merit to them. First, regarding his equal protection claim, McCulloch has failed to establish that the police officer who obtained a mandatory blood sample from him, or any other relevant state decision maker, deliberately and intentionally discriminated against him "based upon an unjustifiable standard such as race, religion[,] or other arbitrary classification." See State v. Villeza, 85 Hawai'i 258, 267-68, 942 P.2d 522, 531-32 (1997). Second, a mandatory blood test based on probable cause and exigent circumstances does not violate McCulloch's right to due process, see Schmerber v. California, 384 U.S. 757, 759 (1966), and McCulloch's trial afforded him due process with respect to his driver's license, see Kernan v. Tanaka, 75 Haw. 1, 31, 856 P.2d 1207, 1222 (1993); Sandy Beach Defense Fund v. City Council of the City and County of Honolulu, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989). Third, HRS § 286-163 is not unconstitutionally vague. See Gardens at West Maui Vacation Club v. County of Maui, 90 Hawai'i 334, 343, 978 P.2d 772, 781 (1999); Entrekin, slip op. at 2 (interpreting HRS § 286-163 according to its plain language). Therefore,

IT IS HEREBY ORDERED that the district court's judgment and sentence from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 25, 2002.

On the briefs:

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