

NO. 23002

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

TOMMY H. BROADHURST, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(REPORT NO. F-80131)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Tommy Broadhurst appeals his conviction of driving under the influence of intoxicating liquor, in violation of Hawai'i Revised Statutes (HRS) § 291-4 (Supp. 1998). On appeal, Broadhurst argues that the district court erred in denying his motion to dismiss the case pursuant to Rule 48 of the Hawai'i Rules of Penal Procedure (HRPP).

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we resolve defendant-appellant's arguments as follows: 1) the district court's finding that the prosecution exercised due diligence in attempting to secure the arresting officer's presence at trial was not clearly erroneous; 2) the district court's implicit finding that the officer's testimony was material to the prosecution's case was not clearly erroneous; 3)

the district court did not err by excluding the period from June 8 to October 28, 1999 under HRPP Rule 48(c)(4)(i); and 4) because only 176 non-excludable days had elapsed as of October 28, 1999, the district court did not err by denying Broadhurst's motion to dismiss.

THEREFORE, IT IS HEREBY ORDERED that the district court's judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, June 7, 2001.

On the briefs:

Frederick W. Gregg, Jr.
for defendant-appellant

Carol S.W. Kitaoka, Deputy
Prosecuting Attorney,
for plaintiff-appellee