

NO. 23554

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

DONALD SCOTT BRADBURY, Defendant-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT¹
(TRAFFIC NO. 99-245784)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Acoba, JJ.;
and Nakayama, J. Dissenting, With Whom Ramil, J. Joins)

On July 16, 1999, Defendant-Appellee Donald Scott Bradbury (Defendant) was arrested for driving under the influence of intoxicating liquor, Hawai'i Revised Statutes (HRS) § 291-4 (Supp. 2000).²

¹ The district court judge in this case was the Honorable David Fong.

² HRS § 291-4 provides, in pertinent part, as follows:

Driving under the influence of intoxicating liquor.

(a) A person commits the offense of driving under the influence of intoxicating liquor if:

- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty; or
- (2) The person operates or assumes actual physical control of the operation of any vehicle with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath.

Subsequently, the arresting officer read to Defendant Honolulu Police Department (HPD) form 396B entitled, "ADMINISTRATIVE DRIVER'S LICENSE REVOCATION LAW[,]" which provided in pertinent part as follows:

I READ THE FOLLOWING TO THE ARRESTEE: Pursuant to the Administrative Driver's License Revocation Law, I must inform you (arrestee) of the following:

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- B. That if you refuse to take any [blood alcohol concentration (BAC)] tests the consequences are as follows:
1. If your driving record shows no prior alcohol enforcement contacts during the five years preceding the date of your arrest, your driving privileges will be revoked for one year instead of the three month revocation that would apply if you chose to take a test and failed it[.]

. . . .
Defendant chose to take a BAC test.

I.

On October 28, 1999, this court issued its decision in State v. Wilson, 92 Hawai'i 45, 987 P.2d 268 (1999), that deemed the advice imparted in HPD form 396B to be faulty and required suppression of any incriminating test result that was obtained following such advice.

On December 14, 1999, based on Wilson, Defendant moved to suppress the result of his BAC test. On January 18, 2000, Defendant moved to compel discovery or, in the alternative, to dismiss for failing to provide discovery. On January 26, 2000, Plaintiff-Appellant State of Hawai'i (the prosecution) filed a memorandum in opposition to Defendant's motion to suppress.

On February 24, 2000, the district court of the first circuit (the court) held a hearing on Defendant's motions. The court denied his motion to compel discovery or, in the alternative, to dismiss, but granted Defendant's motion to suppress the results of the BAC test. On April 27, 2000, the court filed its findings of fact, conclusions of law, and an order in accordance with its grant of Defendant's motion.

On May 10, 2000, the prosecution filed a notice of appeal.

II.

The prosecution raises the following arguments in this appeal: (1) Wilson was based on a misinterpretation of HRS § 286-261 (Supp. 1999) by Gray v. Administrative Director of the Court, State of Hawai'i, 84 Hawai'i 138, 931 P.2d 580 (1997), and, thus, cannot be the basis for suppressing Defendant's BAC test result; (2) assuming arguendo Gray is correct, suppression is not required without evidence of prejudice; and (3) assuming arguendo Wilson is correct, Wilson should not be applied retroactively. Defendant contends that (1) the prosecution has "no standing" to raise the issue of the interpretation of HRS § 286-261 because it did not raise the argument in the court; (2) the statutory interpretation set forth in Gray and Wilson reflects the legislative intent; and (3) the court was correct in rejecting

the prosecution's retroactivity argument because Wilson did not establish a new rule and, thus, no retroactivity was involved.

III.

The arguments raised by the prosecution were considered and rejected in State v. Garcia, No. 23513, slip op. (Haw. Aug. 10, 2001). Garcia sets forth the relevant arguments and law common to the appeal in Garcia and in this case and reaffirms the holdings in Gray and Wilson. Garcia, as precedent, controls the prosecution's appeal. Therefore,

IT IS HEREBY ORDERED that the court's April 27, 2000 findings of fact, conclusions of law, and order granting Defendant's motion to suppress is affirmed based on the reasons set forth in Garcia.

DATED: Honolulu, Hawai'i, August 27, 2001.

On the briefs:

Alexa Fujise, Deputy
Prosecuting Attorney, City
and County of Honolulu,
for plaintiff-appellant.

Robert Eheler for
defendant-appellee.