

NO. 24718

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant,

vs.

JASON J. CAMPBELL, Defendant-Appellee.

APPEAL FROM THE FIRST CIRCUIT COURT

(CR. NO. 01-1-0990)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant State of Hawai'i [hereinafter, the prosecution] appeals from an order by the Circuit Court of the First Circuit, the Honorable Reynaldo Grauly, presiding, suppressing evidence of defendant-appellee Jason J. Campbell's breath alcohol test result. On appeal, the prosecution argues that the circuit court erred in suppressing evidence of Campbell's breath alcohol concentration test because he was fully apprised of the applicable sanctions under the administrative license revocation scheme. The defense responds, inter alia, that the warnings contained in Form 396B were inadequate because they failed to inform Campbell: (1) that he could be charged with habitually driving under the influence of intoxicating

liquor; and (2) of the definition of "prior alcohol enforcement contacts."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented, we hold that neither Hawai'i Revised Statutes §§ 286-151¹ nor 286-255² (Supp. 2000) require that drivers be warned that they may be charged with habitually driving under the influence of intoxicating

¹ HRS § 286-151 states in pertinent part:

(b) The test or tests shall be administered at the request of a police officer having probable cause to believe the person driving or in actual physical control of a motor vehicle or moped upon the public highways is under the influence of intoxicating liquor or drugs, or is under the age of twenty-one and has a measurable amount of alcohol concentration, only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a police officer of the sanctions under part XIV and sections 286-151.5 and 286-157.3.

² HRS § 286-255 is contained in HRS chapter 286, part XIV and states in pertinent part:

(a) Whenever a person is arrested for a violation of section 291-4 or 291-4.4 . . . the arresting officer immediately shall take possession of any license held by the person and request the arrestee to take a test for alcohol concentration. The arresting officer shall inform the person that the person has the option to take a breath test, a blood test, or both. The arresting officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath or blood test.

liquor or drugs pursuant to HRS § 291-4.4 (Supp. 2000).³

However, inasmuch as: (1) the circuit court's findings of fact indicate that its ruling was also based upon the defense's argument that Campbell was not informed of the definition of "prior alcohol enforcement contacts"; and (2) the prosecution failed to address this argument, raised by the defense below and again in its answering brief, we hold that the prosecution has waived any challenge to this basis for the circuit court's ruling, see Hawai'i Rules of Appellate Procedure Rule 28(b)(7) (2000), and, therefore, has failed to sustain its burden of demonstrating error in the record. See State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). Accordingly,

³ HRS § 291-4.4 states in pertinent part:

(a) A person commits the offense of habitually driving under the influence of intoxicating liquor or drugs if, during the ten-year period the person has been convicted three or more times for a driving under the influence offense; and

(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 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;

(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; or

. . . .

(c) Habitually driving under the influence of intoxicating liquor or drugs is a class C felony.

IT IS HEREBY ORDERED that the November 13, 2001
"Findings of Fact, Conclusions of Law, and Order Granting
Defendant Jason J. Campbell's Motion to Preclude Evidence of
Result of Alcohol Concentration Test" is affirmed.

DATED: Honolulu, Hawai'i,

On the briefs:

Mark Yuen, Deputy
Prosecuting Attorney,
for plaintiff-appellant

James s. Tabe, Deputy
Public Defender, for
defendant-appellee