

\*\*\* NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER \*\*\*

NO. 26025

IN THE SUPREME COURT OF THE STATE OF HAWAII

DAVID C. SODERLUND, Petitioner-Appellant

vs.

ADMINISTRATIVE DIRECTOR OF THE COURTS, STATE OF HAWAII,  
Respondent-Appellee.

K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2006 DEC 18 AM 10:22

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(JR03-0012; Original Case No. 03-00591)

SUMMARY DISPOSITION ORDER

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

Petitioner-Appellant David C. Soderlund ("Soderlund") appeals from the Judgment on Appeal of the District Court of the First Circuit ("district court") filed on July 16, 2003, which affirmed Respondent-Appellee Administrative Director of the Courts' ("Administrative Director") one-year revocation of Soderlund's driver's license.

On appeal, Soderlund argues that the district court erred by: (1) ruling that Soderlund had not been "denied both his [constitutional] rights to a hearing on the ADLRO access restrictions [requiring that all prospective attendees, including the hearing respondent and his counsel, sign in and present identification in order to attend a ADLRO hearing] and his rights to a public hearing . . . [;]" (2) ruling that Soderlund's arresting officer, Honolulu Police Department ("HPD") Officer Jose Villanueva, administered field sobriety tests ("FSTs") "in accordance with [National Highway Transportation Safety Administration] [("]NHTSA[") standards[]" (emphasis omitted) (some capitalization omitted); (3) ruling that Soderlund had not been denied due process of law despite the fact that ADLRO review

hearings from ADLRO license revocations are conducted (a) in de novo fashion, and (b) without following any established procedure, in violation of the Hawai'i and United States Constitutions and Hawai'i Revised Statutes ("HRS") §§ 291E-31 through 291E-50 (administrative driver's license revocation law); (4) ruling that the "HPD-396B" implied consent form (for alcohol content or drug testing) was not fatally defective in (a) failing to inform Soderlund that he had a legal right to withdraw his consent to alcohol or drug testing, (b) failing to fully inform Soderlund of the necessary requirements for ADLRO to revoke a driver's license, where an alcohol or drug test is refused, and (c) failing to inform Soderlund that a revocation of his driver's license would also deprive him of the ability to use a moped or a vessel; (5) holding that HRS § 291E-34(a)(2) (Supp. 2001)<sup>1</sup> (requiring that a notice of administrative revocation of a driver's license explain in "clear language" the distinction between an administrative revocation and a criminal license suspension or revocation pursuant to HRS § 291E-61 (Supp. 2002)<sup>2</sup>)

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<sup>1</sup> HRS § 291E-34(a)(2) (Supp. 2001) provides in pertinent part:

(a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

. . . . .

(2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section 291E-61 or 291E-61.5 . . . . .

<sup>2</sup> HRS § 291E-61(a)(1) (Supp. 2002), the version in effect at the time of Soderlund's arrest, provided in pertinent part:

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

(continued...)

had not been violated; and (6) failing to reverse the ADLRO hearing officer's ruling on account of the hearing officer's improper citation of unpublished Hawai'i court opinions arising from ADLRO appeals. (These arguments are hereinafter referred to as "Argument Nos. 1-6.")

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, we hold as follows:

(1) Argument No. 2 is without merit because even assuming that Officer Villanueva's testimony as to the walk-and-turn and one-leg stand FSTs was inadmissible, after careful review, we hold that there remained a wealth of competent evidence (more than substantial evidence) supporting the Hearing Officer's finding that Soderlund, by a preponderance of the evidence, was operating his vehicle under the influence of an intoxicant. See HRS §§ 291E-38(e)(3)(A) (Supp. 2002)<sup>3</sup> and 291E-61; Shorba v. Bd. of Educ., 59 Haw. 388, 398, 583 P.2d 313, 319 (1978).

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<sup>2</sup>(...continued)

(1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner . . . .

. . . .

<sup>3</sup> (e) The [Administrative Director] shall affirm the administrative revocation only if the director determines that:

. . . .

(3) The evidence proves by a preponderance that:  
(A) The respondent operated the vehicle while under the influence of an intoxicant . . . .

(2) Except as to a jurisdictional subargument within Argument No. 3, which is discussed infra, Arguments No. 1, 4, 5, 6, and Argument No. 3 (except as to the jurisdictional subargument) have been previously addressed by this court and found to be without merit.<sup>4</sup>

(3) Finally, with respect to the jurisdictional subargument within Argument No. 3, we hold, as Soderlund admits, that our decision in Castro v. Admin. Dir. of the Courts, 97 Hawai'i 463, 40 P.3d 865 (2002), is controlling, because no proof of his refusal to submit to a blood, breath, or urine test was required in order for the Hearing Officer to revoke Soderlund's driver's license (in this case, it was sufficient that there was more than substantial evidence to support the Hearing Officer's finding that Soderlund, by preponderance of the evidence, operated his vehicle while under the influence of an intoxicant in violation of HRS § 291E-61, see HRS § 291E-38(e)(3)(A)). We decline Soderlund's invitation to overrule Castro. As such, the

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<sup>4</sup> See e.g.:

As to Argument No. 1 in the instant appeal, Custer v. Admin. Dir. of the Courts, 108 Hawai'i 350, 358, 120 P.3d 249, 257 (2005);

As to Argument No. 3 in the instant appeal (except as to the jurisdictional subargument), Freitas v. Admin. Dir. of the Courts, 108 Hawai'i 31, 44-45, 116 P.3d 673, 686-87 (2005); Dunaway v. Admin. Dir. of the Courts, 108 Hawai'i at 78, 83, 117 P.3d 109, 114 (2005);

As to Argument No. 4 in the instant appeal, Dunaway, 108 Hawai'i at 85-87, 117 P.3d at 115-17;

As to Argument No. 5 in the instant appeal, id. at 87, 117 P.3d at 118;

As to Argument No. 6 in the instant appeal, Freitas, 108 Hawai'i at 46-47, 116 P.3d at 688-89; and

As to Arguments Nos. 3 through 6 of the instant appeal (except as to the jurisdictional subargument within Argument No. 3), Custer, 108 Hawai'i at 353-54, 120 P.3d at 252-53.

district court's Judgment on Appeal is affirmed.

Therefore,

IT IS HEREBY ORDERED that the Judgment on Appeal of the district court is affirmed.

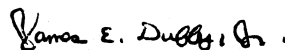
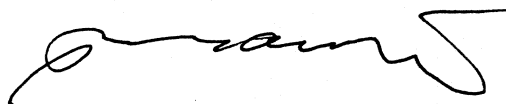
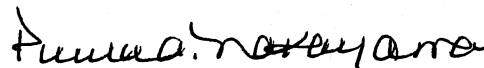
DATED: Honolulu, Hawai'i, December 13, 2006.

On the briefs:

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