

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Petitioner-Plaintiff-Appellee,

vs.

LESLIE G.O.K. GUERNSEY, Respondent-Defendant-Appellant.

NO. 22767

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CASE NO. TD 4P of 7/23/99)
(HPD #99-026568)

FEBRUARY 18, 2004

MOON, C.J., LEVINSON, NAKAYAMA, ACOBA, AND DUFFY, JJ.

PUBLISHED ORDER

Petitioner-plaintiff-appellee State of Hawaii [hereinafter, "the prosecution"] applied for a writ of certiorari to review the published opinion of the Intermediate Court of Appeals (ICA) in State v. Guernsey, No. 22767 (Haw. App. Jan. 5, 2001), in which the ICA vacated the district court's¹ judgment and remanded for a new trial.

The sole issue on appeal is whether an anonymous caller's report of erratic driving is sufficient to justify an investigatory stop. Based on this court's opinion in State v.

¹ The Honorable George Kimura presided over the trial. The Honorable James H. Dannenberg presided over the hearing on Guernsey's motion to suppress.

Prendergast, No. 24793 (Haw. Feb. 2, 2004), we reverse the holding of the ICA and affirm the district court's judgment of conviction and sentence.

The only factual distinction between this case and Prendergast is that, when a Honolulu Police Department Officer stopped Guernsey, the only two cars on the road were Guernsey's vehicle and the Officer's vehicle. In contrast, there were several cars in front of and behind the defendant in Prendergast. This distinction does not affect the Prendergast analysis. The potential danger from an intoxicated driver, even on an empty road, is still great; this danger is sufficient to distinguish the instant case from State v. Phillips, 67 Haw. 535, 696 P.2d 346 (1985). Therefore,

IT IS HEREBY ORDERED that the ICA's opinion is reversed and the district court's judgment of conviction and sentence is affirmed.

On the briefs:

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for petitioner-plaintiff-
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Guernsey