

NO. 23083

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

STUART IHA, Defendant-Appellee
(NO. 23083 (D.C. NOS. 99-176774 & 99-176805))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

TIMOTHY LYONS, Defendant-Appellee
(NO. 23156 (TRAFFIC NO. 99247292))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

DESMOND ISHII, Defendant-Appellee
(NO. 23157 (TRAFFIC NO. 99192831))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

REGINALD P. McKEAGUE, Defendant-Appellee
(NO. 23158 (TRAFFIC NO. 99271793))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

JULIO ROQUE, Defendant-Appellee
(NO. 23161 (TRAFFIC NO. 99086650))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

PAULIASI FUSIKATA, Defendant-Appellee
(NO. 23177 (TRAFFIC NO. 99343660))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

MARK P. DAMO, Defendant-Appellee
(NO. 23178 (TRAFFIC NO. 99264685))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

MATTHEW ANTHONY FOSTER, Defendant-Appellee
(NO. 23189 (TRAFFIC NO. 99275847))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

PAULO POLOA, Defendant-Appellee
(NO. 23190 (TRAFFIC NO. 99044980))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

DARIN K. INOUE, Defendant-Appellee
(NO. 23191 (TRAFFIC NO. 99303675))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

WIM K. S. KOKI, Defendant-Appellee
(NO. 23192 (TRAFFIC NO. 99220398))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

ALLAN ARAO, Defendant-Appellee
(NO. 23193 (TRAFFIC NO. 99181257))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

ROBERT Y. WATASE, Defendant-Appellee
(NO. 23213 (TRAFFIC NO. 99248371))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CODY R. WELCH, Defendant-Appellee
(NO. 23234 (TRAFFIC NO. 99294509))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

BRADLEY SHELBURNE, Defendant-Appellee
(NO. 23235 (TRAFFIC NO. 99347262))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

JAMES M. McENEANEY, Defendant-Appellee
(NO. 23236 (TRAFFIC NO. 99289696))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

KENNETH HYUN KIM, Defendant-Appellee
(NO. 23237 (TRAFFIC NO. 97478883))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CHARLES PATRICK RYAN, Defendant-Appellee
(NO. 23238 (TRAFFIC NO. 99369898))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

MELISSA M. L. LEE, Defendant-Appellee
(NO. 23239 (TRAFFIC NO. 99021762))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

FAAVALA FONOTI, Defendant-Appellee
(NO. 23240 (TRAFFIC NO. 99245993))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

EDDIE VISAYA MACADANGDANG, Defendant-Appellee
(NO. 23242 TRAFFIC NO. 99200619))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

SCOTT OROZCO, Defendant-Appellee
(NO. 23253 (TRAFFIC NO. 99255708))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CHARLES W. PACKARD, Defendant-Appellee
(NO. 23254 TRAFFIC NO. 99-285819))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

PAUL M. NIHEI, Defendant-Appellee
(NO. 23255 (TRAFFIC NO. 99-307655))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

ELVIN BIBILONI, Defendant-Appellee
(NO. 23256 (TRAFFIC NO. 99203117))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

LALAINÉ B. KAAI, Defendant-Appellee
(NO. 23257 (TRAFFIC NO. 99165523))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

LEYTON H. PE'A, Defendant-Appellee
(NO. 23258 (TRAFFIC NO. 99-244638))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

BENJAMIN GRANT O'DONNELL, Defendant-Appellee
(NO. 23259 (TRAFFIC NO. 99187345))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

STANLEY E. LOPES, Defendant-Appellee
(NO. 23260 (TRAFFIC NO. 99-105202))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

DAVID C. SODERLUND, Defendant-Appellee
(NO. 23274 (TRAFFIC NO. 99272108))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

DAE KYU KIM, Defendant-Appellee
(NO. 23326 (TRAFFIC NO. 99044901))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

YOSHIKO HAMPTON, Defendant-Appellee
(NO. 23327 (TRAFFIC NO. 98045991))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

GULU WATAMULL, Defendant-Appellee
(NO. 23328 (TRAFFIC NO. 98-246447))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CHESTER ELAR CABANG, Defendant-Appellee
(NO. 23329 (TRAFFIC NO. 99345882))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CINDY A. SHISHIDO, Defendant-Appellee
(NO. 23330 (TRAFFIC NO. 97-476379))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

RICHARD ZURAWSKI, Defendant-Appellee
(NO. 23347 (TRAFFIC NO. 99-010563))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

RONALD K. SAKKA, Defendant-Appellee
(NO. 23359 (TRAFFIC NO. 99014025))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

JAE RYONG LEE, Defendant-Appellee
(NO. 23363 (TRAFFIC NO. 99247442))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

BENNETT M. K. LEUNG, Defendant-Appellee
(NO. 23364 (TRAFFIC NO. 99-143154))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

DONOVAN KUAIKA LUIS, Defendant-Appellee
(NO. 23365 (TRAFFIC NO. 99081919))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CARLOS RODRIGUEZ, Defendant-Appellee
(NO. 23366 (TRAFFIC NO. 98176837))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CLINT J. NAHINA, Defendant-Appellee
(NO. 23371 (TRAFFIC NO. 99-255948))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

SAMUEL D. GIBSON, Defendant-Appellee
(NO. 23436 (TRAFFIC NO. 99-344599))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

JON L. DELMONICO, Defendant-Appellee
(NO. 23437 (TRAFFIC NO. 99-280882))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

JOHN WARD, Defendant-Appellee
(NO. 23438 (TRAFFIC NO. 99-016415))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

RODERICK KENNETH CAPELLE, Defendant-Appellee
(NO. 23452 (TRAFFIC NOS. 99-184122 & 99-184155))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

BERNARD F. TORRES, Defendant-Appellee
(NO. 23453 (TRAFFIC NO. 99-279566))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CLIFFORD BAILEY, Defendant-Appellee
(NO. 23561 TRAFFIC NOS. 98-300883 & 98-300384))

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

YOON HOON SONG, Defendant-Appellee
(NO. 23596 (TRAFFIC NO. 98-273283))

APPEALS FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(TRAFFIC NOS. 99176774, 99176805, 99247292, 99192831,
99271793, 99086650, 99343660, 99264685, 99275847, 99044980,
99303675, 99220398, 99181257, 99248371, 99294509, 99347262,
99289696, 97478883, 99369898, 99021762, 99245993, 99200619,
99255708, 99285819, 99307655, 99203117, 99165523, 99244638,
99187345, 99105202, 99272108, 99044901, 98045991, 98246447,
99345882, 97476379, 99010563, 99014025, 99247442, 99143154,
99081919, 98176837, 99255948, 99344599, 99280882, 99016415,
99184122, 99184155, 99279566, 98300883, 98300384, 98273283)

SUMMARY DISPOSITION ORDER

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

This appeal consolidates forty-nine cases in which the district court of the first circuit (the court)¹ suppressed the blood or breath alcohol test results of drivers arrested for driving under the influence of alcohol, Hawai'i Revised Statutes (HRS) § 291-4 (Supp. 2000), based on State v. Wilson, 92 Hawai'i 45, 987 P.2d 268 (1999). Because the cases involve the same fact pattern and legal issues, we need not discuss the facts for all forty-nine cases. We consider the representative facts in State v. Iha, No. 23083, Traffic No. 99-176774, in disposing of these appeals.

I.

On May 23, 1999, Defendant-Appellee Stuart Iha (Defendant) was arrested for driving under the influence of intoxicating liquor (DUI), HRS § 291-4.² Subsequently, the

¹ The district court judges who were involved in these cases were the Honorable George Kimura, the Honorable Russell Blair, the Honorable Peter Van Name Esser, and the Honorable Colette Garibaldi.

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

(continued...)

arresting officer read to Defendant Honolulu Police Department (HPD) form 396B entitled, "ADMINISTRATIVE DRIVER'S LICENSE REVOCATION LAW[,]" that 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:

-
- 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.

On October 28, 1999, this court issued its decision in Wilson 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 13, 1999, Defendant moved to dismiss the case based on the number of continuances granted the prosecution.

²(...continued)

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.

At the December 13, 1999 hearing, Defendant orally moved to suppress the results of his intoxilyzer test pursuant to Wilson. The court granted Defendant' motion to suppress. On December 22, 1999, the court filed an order to that effect.

On January 6, 2000, Plaintiff-Appellant State of Hawai'i (the prosecution) filed a notice of appeal.

II.

The prosecution raises the following arguments in this appeal with respect to all forty-nine cases: (1) Wilson was based on a misinterpretation of HRS § 286-261 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 intoxilyzer 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. These arguments were addressed 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 that case and the appeals in these cases and reaffirms the holdings in Gray and Wilson. Garcia, as precedent, controls this appeal. Therefore,

IT IS HEREBY ORDERED that the district court's orders herein, granting the defendants' motions to suppress are affirmed, based on the reasons set forth in Garcia.

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

On the briefs:

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