

NO. 23469

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

PAUL T. GALBRAITH, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT¹
(TRAFFIC NO. 99-349578)

SUMMARY DISPOSITION ORDER

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

Around 11:50 p.m. on October 6, 1999, Defendant-Appellant Paul T. Galbraith (Defendant) was arrested for driving under the influence of intoxicating liquor (DUI), Hawaii Revised Statutes (HRS) § 291-4 (Supp. 2000).² Subsequently, the

¹ The district court judge in this case was the Honorable James H. Dannenberg.

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.

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:

Pursuant to the Administrative Driver s License Revocation Law, I must inform you (arrestee) of the following:

. . . .

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. The test revealed that Defendant s BAC was more than the 0.08 grams required for committing a DUI offense under HRS § 291-4(a)(2).

On October 11, 1999, an administrative review of the incident by the Administrative Driver s License Revocation Office resulted in revocation of Defendant s license for three months.

I.

On October 28, 1999, this court issued State v. Wilson, 92 Hawai i 45, 987 P.2d 268 (1999), which deemed the advice imparted in HPD form 396B to be faulty, based on this court s decision in Gray v. Administrative Director of the Court, State of Hawai i, 84 Hawai i 138, 931 P.2d 580 (1997), and required

suppression of any incriminating test result that was obtained following such advice. Wilson indicated that assuming Wilson had no prior alcohol enforcement contact, he should have been advised that taking and failing the test could subject him to revocation of his driving privileges for up to one year.

On December 14, 1999, based on Wilson, Defendant moved to suppress the results of the BAC test. On January 10, 2000, Plaintiff-Appellee State of Hawaii (the prosecution) filed a memorandum in opposition to Defendant's motion to suppress. On March 10, 2000, Defendant moved to dismiss for lack of probable cause to stop Defendant. On March 16, 2000, the prosecution filed a memorandum in opposition to Defendant's motion to dismiss.

On March 17, 2000, the district court of the first circuit (the court) held a hearing on Defendant's motions. The court denied Defendant's motions to suppress and to dismiss. After the court's rulings on his motions, Defendant orally entered a conditional plea of no contest, to which the prosecution and the court agreed, preserving his right to appeal the issues of Wilson and the probable cause for the stop. On March 17, 2000, the court accepted Defendant's plea, sentenced him as a first time offender, and entered judgment accordingly.

On April 7, 2000, the court filed its findings of fact, conclusions of law and an order denying Defendant's motion with respect to the Wilson argument.

On April 26, 2000, the court approved Defendant's ex-parte motion for extension of time to May 17, 2000 to file his notice of appeal.

On May 2, 2000, Defendant filed a written statement of the issue reserved for appeal, apparently of only the court's March 17, 2000 suppression ruling.

On May 15, 2000, Defendant filed a notice of appeal. In his appeal, Defendant argues error only with respect to the court's application of Wilson. We thus affirm the court's order denying Defendant's March 10, 2000 motion to dismiss. Accordingly, review of his appeal is limited to the Wilson issue.

II.

Defendant contends that the court erred in denying his motion to suppress on the ground that he did not suffer any harm as a result of the warning given to him, because he received a three-month license revocation and not a possible one year revocation and, thus, he lacked standing to bring the motion. The prosecution argues that (1) Wilson should not be applied retroactively and (2) suppression is not required without evidence of prejudice.

III.

State v. Garcia, No. 23513, slip op. (Haw. Aug. 10, 2001), sets forth the relevant arguments and law common to the appeal in Garcia and in this case. Contrary to the court's ruling, Garcia states that Wilson indicated prejudice inhered in the failure of the police to properly render a complete explanation of the penalties to the driver in the first place, slip op. at 18, and [e]ven if a defendant's ultimate revocation period did not exceed three months, the sanction ultimately imposed after taking the test has nothing to do with the defendant's right to be properly advised so as to enable the defendant to make an informed decision. Id. at 18 n.7. Thus, Defendant suffered harm and had standing to request suppression of the BAC test result. Furthermore, Garcia instructs that Wilson is to be applied retroactively. Garcia, as precedent, controls Defendant's appeal. Accordingly, the court erred and Defendant's BAC test result must be suppressed. Therefore,

IT IS HEREBY ORDERED that the court's April 7, 2000 findings of fact, conclusions of law, and order denying Defendant's motion to suppress, Defendant's March 17, 2000 no contest plea, and the court's March 17, 2000 judgment and sentence are vacated based on the reasons set forth in Garcia,

and that this case is remanded to the court for disposition in accordance with this order.

DATED: Honolulu, Hawaii, August 27, 2001.

On the briefs:

Deborah Kim, Deputy Public
Defender, for defendant-
appellant.

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