DISSENTING OPINION BY NAKAYAMA, J.,
WITH WHOM RAMIL, J., JOINS

I respectfully dissent. For the reasons discussed in my dissent in State v. Garcia, No. 23513 (Haw. Sup. Ct. August 10, 2001) (Nakayama, J., dissenting), I believe that State v. Wilson, 92 Hawai'i 45, 987 P.2d 268 (1999), was wrongly decided and should be overruled.

In order to invoke the exclusionary rule, a defendant must prove that the evidence was obtained unlawfully and in violation of his or her constitutional rights. State v. Pattioay, 78 Hawai'i 455, 466, 896 P.2d 911, 922 (1995). However, where appropriate, evidence unlawfully obtained without a constitutional violation may be suppressed under this court's supervisory powers. Id. at 469, 896 P.2d 925. This court should only invoke its supervisory powers only in exceptional circumstances. Id. at 469 n.28, 896 P.2d at 925 n.28.

Such exceptional circumstances did not exist in Wilson because the implied consent statute does not create a voluntary right of choice and does not provide for the remedy of suppression in criminal DUI prosecutions where the defendant was not fully informed of the administrative consequences. Wilson, 92 Hawai'i at 55-58, 987 P.2d at 278-82. Further, the warning given Wilson was not so misleading as to coerce or trick him into consenting and did not imply that taking the test was a "safe harbor, free of adverse consequences." Id. at 59, 987 P.2d at 282. Therefore, the remedy of suppression was not appropriate.

In my view, Wilson was wrongly decided and should have been overruled in Garcia. Because the warning given to Barnes contained the same error as the warning given to Wilson and there are no additional circumstances to distinguish the present case, suppression is also inappropriate in the present case. I would vacate the circuit court's order and remand the case for further proceedings.