

NO. 23573

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant

vs.

ROBERT L. BARNES, Defendant-Appellee

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APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT<sup>1</sup>  
(TRAFFIC NO. 0I9905052)

SUMMARY DISPOSITION ORDER

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

On May 15, 1999, Defendant-Appellee Robert L. Barnes (Defendant) was arrested for driving under the influence of intoxicating liquor (DUI), Hawai'i Revised Statutes (HRS) § 291-4 (Supp. 2000).<sup>2</sup> Subsequently, the arresting officer read to Defendant a form entitled, "Implied Consent Warning/Waiver

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<sup>1</sup> The district court judge in this case was the Honorable James H. Dannenberg.

<sup>2</sup> 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.

Certificate and Hawai'i Administrative Driver's License

Revocation Law[,]" which provided in pertinent part as follows:

I READ THE FOLLOWING TO [Defendant]: Pursuant to Title 18, United States Code, Section 3118, Army Regulation 190-5 OPNAV 11200.5C, AFI 31-204, MCO 5110.1C and Hawai'i Revised Statutes, Part XIV, I must inform you of the following:

. . . .  
EFFECT OF REFUSAL: If you refuse to submit to any [blood alcohol concentration (BAC)] test or tests, the consequences are as follows:

. . . .  
2. If your driving record shows no prior alcohol enforcement contacts during the five (5) years preceding the date of your arrest, your driving privileges in the State of Hawai'i will be revoked for one (1) year instead of the three (3) month revocation that will apply if you choose to take a test and fail it.

. . . .

Defendant chose to take a BAC test.

I.

On October 28, 1999, this court decided State v. Wilson, 92 Hawai'i 45, 987 P.2d 268 (1999), which deemed the advice imparted in Honolulu Police Department form 396B to be faulty and required suppression of any incriminating test result that was obtained following such advice. Form 396B stated 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 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[.]

. . . .

State v. Garcia, No. 23513, slip op. at 2-3 (Haw. Aug. 10, 2001). The information conveyed by the form utilized in this case is to the same effect, see supra, and, consequently, would be subject to the Wilson holding.

On February 22, 2000, based on Wilson, Defendant moved in limine to preclude evidence of his BAC test result. On the same day, Plaintiff-Appellant State of Hawai'i (the prosecution) filed a memorandum in opposition to Defendant's motion.

On March 14, 2000, the district court of the first circuit (the court) held a hearing on Defendant's motion, which it granted. On May 31, 2000, the court filed its findings of fact, conclusions of law, and an order granting Defendant's motion in limine to preclude evidence of the breath test result.

On June 21, 2000, the prosecution filed a notice of appeal.

## II.

The prosecution raises the following points of error in this appeal: (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 should stand, Wilson should not be applied retroactively. Defendant contends that the court was correct in suppressing the evidence based on Wilson because (1) Wilson did not establish a new rule and, thus, no retroactivity was involved and (2) even if Wilson was a new rule, it should be applied retroactively because Wilson did not limit the application of its holding.

### III.

Like the advice rendered by the police officer in Wilson with respect to the possible revocation periods for driving privileges, the information given by the arresting officer in the instant case "was inaccurate and misleading and did not fully inform [Defendant] of the legal consequences of submitting to a blood test." Wilson, 92 Hawai'i at 46, 987 P.2d at 269. Adhering to the precedent established in Wilson, Defendant's resulting BAC test result was required to be suppressed. See id. at 53-54, 987 P.2d at 276-77.

Garcia considered and rejected the arguments raised by the prosecution in its appeal and sets forth the relevant arguments and law common to the appeal in that case and in this case. Garcia, as precedent, controls the prosecution's appeal. Therefore,

IT IS HEREBY ORDERED that the court's March 14, 2000 findings of fact, conclusions of law, and order granting Defendant's motion to suppress is affirmed.

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

On the briefs:

Alexa D.M. Fujise, Deputy  
Prosecuting Attorney,  
City & County of Honolulu,  
for plaintiff-appellant.

Timothy MacMaster for  
defendant-appellee.