

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Respondent-Appellee,

vs.

LAWRENCE PAUL HEARN, Petitioner-Appellant.

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CASE NO. TR7 OF 10/24/00)

ORDER DISMISSING CERTIORARI PROCEEDINGS

(By: Moon, C.J., Levinson, Nakayama, and Circuit  
Judge Graulty, assigned by reason of vacancy, JJ;  
and Acoba, J., dissenting)

Upon further consideration of the records and files in this case and it appearing that the writ of certiorari herein was improvidently granted,

IT IS HEREBY ORDERED that this certiorari proceeding is dismissed.<sup>1</sup>

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<sup>1</sup> In light of Justice Acoba's dissent, we wish to clarify that the dismissal of this certiorari proceeding is premised on our conclusion that, in the context of this case, the trial court did not abuse its discretion in restricting the scope of cross-examination. See State v. Balisbisana, 83 Hawai'i 109, 114, 924 P.2d 1215, 1220 (1996) ("While the right of cross-examination protected by the Confrontation Clause of the Sixth Amendment may not be unduly restricted, it has never been held that this right is absolutely without restriction."). Although the Intermediate Court of Appeals (ICA), in its summary disposition order, indicated that the trial court erred in refusing to admit the 1984 National Highway Traffic Safety Administration (NHTSA) Improved Sobriety Testing manual, it failed to analyze whether defendant had laid a sufficient foundation to establish the relevance, in 1999, of a 1984 manual. Because, ultimately, the correct result was reached in this case, we believe that the ICA's erroneous conclusion as to the admissibility of the outdated manual was not a grave error of law sufficient to justify the grant of certiorari under HRS § 602-59(b) (1993). Moreover, even assuming arguendo that the exclusion of the 1984 manual amounted to an

(continued...)

DATED: Honolulu, Hawai'i, January 23, 2003.

Earle A. Partington,  
for petitioner-appellant,  
on the writ

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<sup>1</sup>(...continued)

abuse of discretion on the part of the trial court, it did not amount to an error of constitutional magnitude because the record indicates that, during cross-examination, defense counsel successfully elicited testimony that called into question the credibility of the police officer who conducted the field sobriety tests as well as the reliability of the tests as performed. Balisbisana, 83 Hawai'i at 114, 924 P.2d at 1220. Therefore, Appellant's contention that the ICA erred by failing to apply a harmless error standard of review is without merit.

Finally, we take issue with Justice Acoba's assertion that issues regarding the relevancy of the 1984 manual were not presented or considered at the trial court level. Having examined the record, we are satisfied that the trial court's decision to exclude the outdated manual was informed by a valid concern that the 1984 manual was no longer relevant for the purposes for which it was offered. The trial court explicitly questioned defense counsel as to the existence of more recent editions of the manual and ultimately excluded the proffered evidence only after the officer being cross-examined was unable to authenticate the manual as the one that was used in the course of his training, which took place some 12 years after the publication of the 1984 manual.