

NO. 24026

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

WILLIAM MICHAEL SARANDRIA, JR., Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(CASE NOS. TR1-TR2: 11/16/00)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Defendant-appellant William Michael Sarandria, Jr.

appeals from the District Court of the Second Circuit, Wailuku Division's December 19, 2000 order denying Sarandria's motion to dismiss; December 27, 2000 order denying Sarandria's motion to suppress; and the October 7, 2003 conviction for driving under the influence.¹ Sarandria contends that the district court: (1) erroneously denied his motion to suppress his breath test results because the information read to him from Maui Police Department (MPD) form 332 (the administrative driver's license revocation form) failed to define "prior alcohol enforcement

¹ The Honorable Douglas H. Ige presided over the hearing on the motion to dismiss and the Honorable Yoshio Shigezawa presided over the hearing for the motion to suppress and trial.

contact;" (2) erroneously failed to suppress all the evidence gathered after Sarandria was told to remain in his vehicle because at that time Sarandria was under de facto arrest and was not read his Miranda rights; and (3) erroneously failed to advise Sarandria of his right to testify and failed to get an on-the-record waiver of such right since he did not testify.

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) this court will not address the district court's denial of Sarandria's motion to dismiss because he did not raise any issues relevant to such motion on appeal. Bitney v. Honolulu Police Dept., 96 Hawai'i 243, 251, 30 P.3d 257, 265 (2001); (2) the district court correctly denied Sarandria's motion to suppress because (a) there was no de facto arrest which required Miranda warnings, and (b) MPD form 332 adequately informed Sarandria of the sanctions for taking or refusing to take a breath or blood test. When Officer Bowker instructed Sarandria to remain in his vehicle, the officer did not have probable cause to arrest Sarandria, nor was Sarandria "in custody." See State v. Ketchum, 97 Hawai'i 107, 127-28, 34 P.3d 1006, 1026-27 (2001); State v. Kaleohano, 99 Hawai'i 370, 377-78, 56 P.3d 138, 145-46 (2002). Sarandria was not interrogated, as he was not subject to "express questioning or its functional equivalent." See State v. Naititi, 104 Hawai'i

224, 236, 87 P.3d 893, 905 (2004). Moreover, Miranda warnings were not required because Officer Bowker reasonably seized Sarandria and engaged him in noncoercive questioning. State v. Kuba, 68 Haw. 184, 188, 706 P.2d 1305, 1309 (1985); see also State v. Wyatt, 67 Haw. 293, 687 P.2d 544 (1984). Sarandria was not affected by the lack of a definition for "prior alcohol enforcement contact" because only one period of administrative revocation could have applied to him. See State v. Rodgers, 99 Hawai'i 70, 74, 53 P.3d 209, 213 (2002); (3) the district court erred when it failed to inform Sarandria of his right to testify and failed to obtain an on-the-record waiver of his right to testify (because he did not testify), and the prosecution did not contend that the error was harmless beyond a reasonable doubt and agreed with Sarandria that his case should be remanded for a new trial as a result of the court's error on this point. See Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995); Therefore,

IT IS HEREBY ORDERED that the district court's December 19, 2000 order denying Sarandria's motion to dismiss and December 27, 2000 order denying Sarandria's motion to suppress

***** NOT FOR PUBLICATION *****

are affirmed; but the district court's October 7, 2003 conviction and sentence is vacated and remanded for a new trial.

DATED: Honolulu, Hawai'i, June 25, 2004.

On the briefs:

Richard L. Rost
for defendant-appellant
William Michael Sarandria, Jr.

Tracy A. Jones
for plaintiff-appellee
State of Hawai'i