

NO. 24354

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

CHERRY ANN AGBILAY, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CASE NO. 20400K)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Cherry Ann Agbilay appeals from the judgment and sentence of the district court of the fifth circuit, the Honorable Gerald S. Matsunaga presiding, entered on April 5, 2001. Specifically, Agbilay argues that the district court erred in denying her motion to suppress the results of a blood sample drawn at the request of the police, on the basis that she was neither under arrest, incapable of refusing a test, nor afforded the opportunity of choosing between a breath and blood test, prior to the blood draw, as required by Hawai'i Revised Statutes (HRS) § 286-151 (Supp. 2000). In addition, Agbilay argues that a mandatory blood extraction, absent an arrest, violates the fourth amendment to the United States Constitution and article I, section 7 of the Hawai'i Constitution.

The prosecution argues that the police were not required to comply with the prerequisites to a blood test pursuant to HRS 286-151, because the blood test was authorized by

HRS § 286-163 (Supp. 2000). The prosecution does not address Agbilay's constitutional arguments.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the district court's judgment and sentence. In light of our recent decision in State v. Entrek, No. 24278 (Haw. May 9, 2002), holding (1) that HRS § 286-163 authorizes the police to obtain a blood sample of a driver involved in a collision resulting in an injury to or the death of any person, including the driver, (2) that the police are not required to comply with the prerequisites to a breath, blood, or urine test contained in HRS § 286-151 prior to obtaining a breath, blood, or urine sample pursuant to HRS § 286-163, and (3) that neither the fourth amendment to the United States Constitution nor article I, section 7 of the Hawai'i Constitution requires the police to arrest a driver prior to obtaining a breath, blood, or urine sample pursuant to HRS § 281-163, we hold that Agbilay's blood sample was lawfully drawn. Therefore,

IT IS HEREBY ORDERED that the district court's judgment and sentence from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, May 30, 2002.

On the briefs:

James S. Tabe, Deputy
Public Defender, for the
defendant-appellant,
Cherry Ann Agbilay

Tracy Murakami, Deputy
Prosecuting Attorney, for
the plaintiff-appellee,
State of Hawai'i