State v. Dow

94 Haw. 206 (2000) | Cited 0 times | Hawaii Intermediate Court of Appeals | June 15, 2000

SUMMARY DISPOSITION ORDER

Defendant-Appellant Kelvin B. Dow (Dow) appeals the February 23, 1999 Judgment of the District Court of the First Circuit convicting and sentencing him for Driving Under the Influence of Intoxicating Liquor (DUI), a violation of Hawaii Revised Statutes (HRS) § 291-4(a)(2) (Supp. 1999). We affirm.

Dow raises three issues on appeal. He claims that the district court erred in: (1) admitting testimony of the first blood test result because no foundation was laid for its admission; (2) admitting the report of the second blood test because the ".19% mgm Ethanol per cc" result written on the blood test report was "nonsense" or failed to establish a blood alcohol level of ".08 or more grams of alcohol per 100 milliliters or cubic centimeters"; and (3) the evidence was insufficient as a matter of law to establish that he was DUI.

We conclude that Dow's first point is meritless, since the record indicates that the district court did not rely on the first blood test in convicting Dow of DUI.

Dow's second contention likewise has no merit. This court has previously noted that "[t]he practice of expressing BAC [(blood alcohol content)] as a percentage of weight per volume (% w/v) stems from a laboratory practice widely followed in this country and elsewhere for expressing solution strengths when small quantities of a liquid or a solid are dissolved in a relatively large amount of a liquid." State v. Ito, 90 Hawaii 225, 228 n.2, 978 P.2d 191, 194 n.2 (App. 1999). Therefore, the ".19 (% w/v) mgm Ethanol per cc" test result, which is equivalent to .19 (% w/v) grams of Ethanol per 100 cubic centimeters" of blood is not "nonsense." Additionally, Edgar Talavera, the licensed medical technologist who tested Dow's blood sample, repeatedly testified that the results of Dow's second blood test showed Dow's BAC as .20 and .19, in excess of the .08 "grams of alcohol per one hundred millimeters or cubic centimeters of blood" set forth in HRS § 291-4(a)(2). Accordingly, the trial court did not err in admitting the results of the second blood test.

Finally, viewed in the light most favorable to the State, there was substantial evidence in the record to convict Dow of DUI. State v. Archuletta, 85 Hawaii 512, 514, 946 P.2d 620.

Affirmed.