NO. 22765

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant

vs.

CORY J. RAMACHER, Defendant-Appellee

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APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. 3:6/23/99)

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

The plaintiff-appellant State of Hawai'i appeals from the findings of fact, conclusions of law, and order of the district court of the second circuit, Wailuku division, filed on August 13, 1999, dismissing the State's request to revoke the defendant-appellee Cory J. Ramacher's driver's license because he refused to submit to drug testing, as authorized by Hawai'i Revised Statutes (HRS) §§ 286-151 through 286-163 (1993 & Supp. 1999),[1] after being arrested for allegedly committing the offense of driving under the influence of drugs, in violation of HRS

[1] HRS §§ 286-151, et seq., discussed infra in section III.A, comprise Title 17, Chapter 286, Part VII of the HRS and provide for the revocation of a motorist's driver's license upon the motorist's refusal to submit to a breath or blood test, once requested to do so by a police officer who has arrested the motorist for driving under the influence of alcohol, in violation of HRS §§ 291-4 or 291-4.3, or upon the motorist's refusal to submit to a blood or urine test if arrested for driving under the influence of drugs, in violation of HRS § 291-7, see infra note 2. The procedures provided for in Part VII are distinct from, and in addition to, any administrative driver's license revocation authorized by HRS Chapter 286, Part XIV, set forth at HRS §§ 286-251, et seq., (1993 & Supp. 1999), see generally Gray v. Adminstrative Dir. of the Court, 84 Hawai'i 138, 931 P.2d 580 (1997), which are not implicated by the present appeal. HRS § 286-157.3(e) provides that "[t]his section shall not preclude a finding under part XIV for failure to comply with [HRS §] 286-151(b)."

§ 291-7 (1993).[2] The State contends that the district court's dismissal of the revocation request on the ground that the State had failed to demonstrate, by a preponderance of the evidence, that the arresting police officer had reasonable grounds to believe that Ramacher had been operating a vehicle under the influence of drugs, inasmuch as the officer did not observe Ramacher drive in an erratic or unsafe manner, was erroneous as a matter of law. We have jurisdiction pursuant to HRS § 286-157.5 (Supp. 1999).[3] For the reasons discussed below, we vacate the district court's findings of fact, conclusions of law, and order, filed on August 13, 1999, and remand the matter for further proceedings consistent with this opinion.

## I. BACKGROUND

The following factual synopsis is drawn from the testimony of Maui Police Department Officers Clifford Pacheco and Ericlee K. Correa, which was adduced during the hearing conducted in the district court in connection with the State's request to revoke Ramacher's license.

At approximately 9:00 p.m. on June 3, 1999, Officer Pacheco was on patrol duty and observed that the rear tires of the vehicle traveling in front of him extended beyond the rear fender walls of the vehicle -- a condition that could constitute

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[2] HRS § 291-7 provides in relevant part that "[a] person commits the offense of driving under the influence of drugs if the person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug which impairs such person's ability to operate the vehicle in a careful and prudent manner. The term 'drug' as used in this section shall mean any controlled substance as defined and enumerated on schedules I through IV of chapter 329." Marijuana is a schedule I drug. HRS § 329-14(d)(20) (Supp. 1999).

[3] HRS § 286-157.5 provides that "[a]n order of a district court issued under [HRS §] 286-157.3 may be appealed to the supreme court." HRS § 286-157.3 is discussed infra in section III.A.

either "a mudguard violation [or] an unsafe vehicle violation." Officer Pacheco, as he was driving behind the vehicle, "ran a registered owner check on the vehicle," which indicated that the vehicle's safety check sticker had expired in February 1999. The safety check sticker affixed to the rear bumper of the vehicle was a March 2000 sticker. The inconsistency between the registered information and the actual sticker caused Officer Pacheco to believe that the actual sticker affixed to the vehicle may have been fraudulent. Officer Pacheco initiated a traffic stop of the vehicle on Piʻilani Highway.

After pulling the vehicle over, Officer Pacheco approached, rapped on the driver's window, which the driver rolled down, and identified himself and the purpose of the stop. Due to the height of the vehicle, a jacked-up truck with tinted windows, the officer could not observe the inside passenger compartment of the vehicle. Officer Pacheco detected the odor of burnt marijuana emanating from within the vehicle.

Ramacher was in the driver's seat; however, due to the tinted windows, the officer had not been able to observe whether Ramacher had been the actual operator of the truck. Officer Pacheco requested the papers and information necessary to complete a traffic citation and began to return to his police vehicle in order to run checks on Ramacher's license and registration. Upon reaching the rear of Ramacher's truck, however, Officer Pacheco glanced back at the truck to determine whether Ramacher and the passenger were moving about inside. Unable to determine what was taking place inside the cab of the truck and believing the situation to be unsafe, Officer Pacheco returned to the driver's window and requested that both Ramacher and the passenger alight from the truck. Officer Pacheco

testified that Ramacher was not then under arrest.

When Ramacher stepped out of the truck, Officer Pacheco observed that his eyes were "slightly bloodshot . . . and . . . glassy." Officer Pacheco did not, however, detect an odor of "burnt marijuana" emanating from Ramacher's person once Ramacher had alighted from the truck. Ramacher neither exhibited any difficulty exiting the truck nor providing Officer Pacheco with the paperwork and information that the officer had requested. Nonetheless, Officer Pacheco suspected the possibility that Ramacher was under the influence of marijuana. The officer advised both Ramacher and his passenger of their "constitutional rights," including their respective rights to legal counsel. Ramacher did not give any indication that he wanted a lawyer.

After advising Ramacher and the passenger of their constitutional rights, Officer Pacheco requested Ramacher's consent to search the truck. Ramacher refused to consent, and Officer Pacheco "moved to the next step," which was to obtain a "canine unit" on the scene.[4] Officer Pacheco testified that, upon closer examination, the safety sticker did not appear to be fraudulent.

Officer Correa provided backup for Officer Pacheco. When Officer Correa arrived at the scene, Officer Pacheco and Ramacher were positioned at the rear of the truck. Officer Pacheco informed Officer Correa that Ramacher "need[ed] to be detained," although Officer Pacheco did not state why he wished to detain Ramacher. Officer Correa recalled, however, that

[4] Officer Pacheco's police report, which was appended to Officer Correa's affidavit supporting the State's request to revoke Ramacher's driver's license, indicates that a canine unit subsequently arrived on the scene and that the canine alerted to Ramacher's truck and to a digital scale and two envelopes of currency discovered on Ramacher's person during a pat-down search conducted by officer Correa.

"afterwards, he told me it was for -- because he had smelled the odor of marijuana coming from within the vehicle."

Officer Correa escorted Ramacher to Officer Pacheco's police vehicle and conducted a pat-down search of Ramacher for weapons. During the pat-down, Officer Correa "felt a hard object in [Ramacher's] front, right pocket," which he removed from the pocket in order to identify it. Officer Correa testified that "it was a miniature digital scale and two envelopes filled with what appeared to be U.S. currency." Officer Correa returned the three items to Ramacher's pocket "because they weren't weapons, and placed him in the police vehicle, handcuffed." Officer Correa testified that Ramacher was still not under arrest at that time; rather, Officer Correa informed Ramacher that he was being detained for investigative purposes, specifically, a drug investigation.

Officer Correa testified that, at that moment, Ramacher was not being detained for the purpose of investigating whether he was driving under the influence of drugs. Nonetheless, after observing that Ramacher's eyes were "red and watery and . . . his speech was soft," Officer Correa suspected that Ramacher "could have been impaired." Consequently, Officer Correa conducted a field sobriety test in which Ramacher agreed to participate. Officer Correa commenced the field sobriety test with the horizontal gaze and nystagmus maneuver, during which he did not detect any signs of impairment in Ramacher, an indication that Ramacher was not under the influence of alcohol or a depressant inhalant. Officer Correa testified that a person under the influence of marijuana would not exhibit any clues of impairment during the horizontal gaze and nystagmus test.

The second maneuver that Officer Correa administered was "the walk and turn," during which Officer Correa detected three of eight indicia of impairment. The walk-and-turn maneuver, however, was developed to detect signs of alcohol impairment, not impairment due to drugs; Officer Correa testified that the presence of two clues constituted a 68% indicator that an individual's blood alcohol content was above .10 percent.

The third maneuver that Officer Correa administered was "[t]he one-leg stand," during which he detected three of four clues of impairment, which was "[m]ore than the minimum two required [for] a 65 percent indicator of impairment."

Lastly, Officer Correa requested that Ramacher participate in a preliminary alcohol screen test. Ramacher consented, and the result was a 0.000 reading. Officer Correa did not detect the odor of alcohol on or emanating from Ramacher's person. Officer Correa concluded that although there were clues of impairment, those clues, together with "the totality of the situation," were inconsistent with impairment due to alcohol.

Officer Correa, consequently, administered several maneuvers to detect impairment due to drugs. Officer Correa noted: (1) that Ramacher's eyes exhibited a "lack of convergence," which meant that Ramacher could not cross his eyes, a condition consistent with cannabis impairment; (2) that his tongue was green, a sign of having smoked cannabis; and (3) that his pulse rate was high, another condition consistent with cannabis impairment. Officer Correa arrested Ramacher on the charge of driving under the influence of drugs and placed Ramacher into his police vehicle.

Officer Correa returned to Ramacher's truck, observed that it lacked a front license plate, measured the rear tires, and noted that the tires extended six inches beyond the rear tire wells.

Subsequently, Officer Correa transported Ramacher to the Wailuku police station. Once at the police station, Officer Correa reviewed a "warning and waiver of Miranda rights" form with Ramacher. See Miranda v. Arizona, 384 U.S. 436 (1966). Ramacher refused to waive his rights.

Officer Correa proceeded to review a form with Ramacher that apprised him of the sanctions he faced if he refused to submit to drug testing of his blood or urine. Officer Correa informed Ramacher that he was under arrest for two offenses: (1) driving under the influence of marijuana; and (2) promoting a dangerous drug.[5] Officer Correa, however, did not inform Ramacher that the blood or urine specimens would be used against him at any subsequent criminal trial. Ramacher refused to submit to a blood or urine test.

On June 4, 1999, the State filed Officer Correa's "Affidavit; Revocation Of Privilege To Drive Motor Vehicle Upon Refusal To Submit To Drug Testing," a preprinted form that the

[5] Officer Correa's police report, appended to his affidavit supporting the State's request to revoke Ramacher's driver's license, reflected that Ramacher was arrested on charges of "driving under the influence of drugs, in violation of HRS § 291-4.7 [sic; apparently HRS § 291-7]," see supra note 2, and "promoting dangerous drugs I," in violation of HRS § 712-1241 (Supp. 1997).

Officer Correa's report also indicated that four different traffic violations and offenses were revealed during the traffic stop, specifically, violations of: HRS §§ 431:10C-104 (Supp. 1997), relating to driving without current no-fault insurance; 291-12.5, a nonexistent statute alleged to apply to "tinted windows"; 249-7 (1993), relating to the lack of a front license plate; and 286-21 (1993), relating to driving a vehicle that is in an unsafe condition, presumably due to the tires' extension beyond the fender walls. The record on appeal does not evince that Ramacher was ever, or is being, prosecuted or cited for any of the foregoing criminal offenses or traffic-related violations and offenses.

officer had filled in with relevant details. Officer Correa's affidavit stated that, on June 3, 1999, at 10:15 p.m., he had arrested Ramacher for the offense of driving under the influence of drugs, in violation of HRS § 291-7, see supra note 2. The location of the arrest is described as "Piilani Hwy./North of Kanani Rd."

Paragraph four of the affidavit contained the following preprinted statement: "That Affiant at the time of arrest had probable cause to believe that the arrestee was operating a motor vehicle or moped, to wit: (*describe driving pattern, violations, etc*);". In the space provided beneath this statement, Officer Correa had filled in: "Defendant stopped by ofc. C. Pacheco on the suspicion of a fraudulent safety decal."

Paragraph five of the affidavit contained the following preprinted statement: "That Affiant at the time of arrest had probable cause to believe that the arrestee had been operating the motor vehicle while under the influence of a drug which impairs, to wit: (*describe indica* [sic] *of consumption, ie. odor of liquor, etc*);". In the space provided beneath this statement, Officer Correa had filled in: "slow soft speech, red/watery eyes, green tint on tongue, poor performance on field sobriety maneuvers, elevated pulse, lack of convergence." Preprinted portions of the affidavit further stated that Officer Correa had informed Ramacher of the sanctions for refusing to submit to a blood or urine test and that Ramacher had refused to submit to such a test. Copies of both Officer Pacheco's and Officer Correa's incident reports were appended to Officer Correa's affidavit.

On June 9, 1999, the State filed a request for a hearing on the affidavit, pursuant to HRS §§ 286-157.3 (Supp. 1999) and 286-157.4 (Supp. 1999), see infra section III.A, to determine whether the statements contained in the affidavit were true and correct and, if so, the duration of Ramacher's statutorily mandated driver's license revocation. On June 23, 1999, the district court conducted a hearing with regard to the State's request, during which the only testimony adduced was that of Officers Pacheco and Correa.

At the conclusion of the proceeding, the district court ruled as follows:

> With respect to his hearing, the hearing on the affidavit, the affidavit of Eric Lee Correa -- and that would be specifically for revocation of privilege to drive motor vehicle upon the refusal to submit to drug testing.
>
> The Court is in receipt of the affidavit prepared by Officer Correa dated and notarized June 4th, 1999 and filed on June 4th, 1999.
>
> With respect to this hearing it is incumbent upon this Court to review the affidavit and its contents.
>
> With respect to this matter this court is aware that a Cory J. Ramacher was arrested on June 3rd, and finds that there's sufficient evidence to report that. Also, that at the time of the arrest affiant had probable cause, according to the contents of this affidavit, to believe that the arrestee was operating a motor vehicle or moped, to wit, specifically for driving when one is under the belief or reasonable suspicion that one is under the influence of drugs, to wit, describe, driving pattern, violations, etcetera.
>
> The basis of this affidavit is based on defendant's stop by Officer C. Pacheco on the suspicion of a fraudulent safety decal. That based on the fraudulent safety decal, believes that this particular defendant was operating a motor vehicle while under the influence of a drug which impairs, to wit, describe; etcetera.
>
> Given the test of the preponderance of the evidence, the Court finds that the information provided in the affidavit is insufficient to support that conclusion.

The State and the district court subsequently engaged in the following colloquy:

> MS. ADAMS [(Deputy Prosecuting Attorney)]: Your Honor, the state would request, ah.
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> THE COURT: Motion for reconsideration?
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> MS. ADAMS: We would request a statement of what specifically was insufficient for the record.
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> THE COURT: Describe driving pattern, violations;

> etcetera, item four of the affidavit.
>
> MS. ADAMS: So a fraudulent safety sticker is not a sufficient violation, would that be the Court's ruling?
>
> THE COURT: Yes. Demonstrating that in fact this particular defendant was driving under the influence of drugs based on a fraudulent safety sticker.
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> MR. MIYAHIRA: And, Your Honor -- excuse me. Mark Miyahira appearing on behalf of the state.
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> That takes into consideration the physical observations of the defendant -- excuse me -- of Mr. Ramacher, the observations of the performance during the field sobriety maneuver, an elevated pulse, a lack of convergence, is that all taken into consideration in the Court's decision? And what is the Court's ruling on that basis?
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> THE COURT: This Court made its ruling based on the initial stop and item Number 4.
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> MR. MIYAHIRA: Your Honor, for the record, we would note our objection.
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> THE COURT: The record is noted.
>
> A VOICE: (Inaudible).
>
> THE COURT: Yeah. The stop.
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> MR. MIYAHIRA: So it's my understanding that the Court's understanding is that it's insufficient evidence for the stop itself?
>
> THE COURT: No. There's probable cause to stop based on a safety check violation.
>
> MS. ADAMS: But there is insufficient evidence that the defendant was under the influence?
>
> THE COURT: Based on no driving pattern.
>
> MR. MIYAHIRA: Based on no driving pattern.

The district court calendar for the morning of Wednesday, June 23, 1999 reads in relevant part: "implied consent hearing had; sufficient evidence for probable cause for traffic stop based on safety sticker; but driving pattern as stated in condition #4 of the affidavit not sufficient evidence to support this charge; case dismissed with prejudice."[6]

On July 2, 1999, the State filed a motion for written findings of fact, conclusions of law, and an order, and an ex parte motion to extend the time within which to file a notice of appeal. On July 6 and 15, 1999, respectively, the district court filed orders granting (1) the State's ex parte motion to extend the time to file a notice of appeal and (2) the State's motion for written findings of fact, conclusions of law, and an order.

[6] The copy of the district court's calendar for June 23, 1999 is certified by the district court clerk.

On August 13, 1999, the State filed proposed findings of fact, conclusions of law, and an order, which the district court signed and filed later that day over Ramacher's objection as to form.

For the purposes of the present appeal, the district court's relevant findings of fact were as follows:

> 1. On June 3, 1999, at approximately 9:00 p.m. Officer Clifford Pacheco initiated a traffic stop of [Ramacher's] vehicle based on the rear tires of the vehicle protruding past the rear fender walls.
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> . . . .
>
> 3. A dispatch check indicated that [Ramacher's] safety sticker had expired in February 1999, while the safety sticker on [Ramacher's] vehicle indicated an expiration date of March 2000; this caused Officer Pacheco to believe that the safety sticker on the vehicle was possibly fraudulent.
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> 4. Upon approach[,] Officer Pacheco observed [Ramacher] in the driver's seat of the vehicle and noticed an odor of burnt marijuana emanating from the vehicle.
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> . . . .
>
> 6. Due to the height of the vehicle and the fact that Officer Pacheco was unable to see inside of the vehicle, Officer Pacheco asked [Ramacher] and the passenger to exit the vehicle for safety reasons.
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> 7. Upon exit of the vehicle [Ramacher's] eyes were observed to be slightly bloodshot and glassy[,] causing Officer Pacheco to believe that Defendant was possibly under the influence of marijuana.
>
> 8. Officer Pacheco advised both [Ramacher] and the passenger of their constitutional rights.
>
> 9. On June 3, 1999, at approx 9:00 p.m., Office Ericlee Correa provided back-up assistance to Officer Pacheco in the traffic stop of [Ramacher], who was then being detained for a drug investigation.
>
> . . . .
>
> 11. Officer Correa administered field sobriety maneuvers on [Ramacher] to determine whether [he] exhibited signs of impairment.
>
> 12. [Ramacher] displayed no signs of horizontal gaze nystagmus (HGN)[,] which indicated to Officer Correa that [Ramacher] was not under the influence of alcohol.
>
> 13. One under the influence of cannabis would not exhibit clues of HGN.
>
> 14. [Ramacher] exhibited signs of impairment during the performance of the walk and turn and one leg stand stages of the field sobriety maneuvers.
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> 15. [Ramacher] participated in a preliminary alcohol screen test[,] which resulted in a reading of .000 breath alcohol content.
>
> 16. Pursuant to his DRE training, Officer Correa observed [Ramacher's] eyes to exhibit a lack of convergence, a green tint on his tongue, and his pulse rate was elevated, all of which are indicators of cannabis use.
>
> 17. [Ramacher] was placed under arrest based on Officer Correa's reasonable belief that [Ramacher] was operating his vehicle under the influence of cannabis.
>
> 18. At the Wailuku Police Station[,] Officer Correa

> reviewed the DUI Drug sanctions form with [Ramacher] by reading it out loud and providing [Ramacher] with a copy. This form offers the options of taking or refusing drug tests and the penalties attached to refusal. [Ramacher] indicated on this form that he refused to submit to any type of chemical test. [Ramacher] also signed this form.
>
> 19. On June 4, 1999, Officer Correa submitted an Affidavit for Revocation of Privilege to Drive Motor Vehicle Upon Refusal to Submit to Drug Testing[.]

The district court entered the following conclusions of law:

> 1. At the time of the arrest, Officer Correa had probable cause, according to the contents of his affidavit, to believe that [Ramacher] was operating a motor vehicle while under the influence of drugs, pursuant to HRS §§ 286-157.4(1) and 286-157.4(2).
>
> 2. There was probable cause to stop [Ramacher's] vehicle based on a safety check violation.
>
> 3. The standard for such civil hearing for revocation of privilege to drive a motor vehicle upon refusal to submit to drug testing is by a preponderance of the evidence. Gray v. Administrative Director of the Court, State of Hawaii, 84 Haw. 138, 931 P.2d 580 (1997).
>
> 4. Pursuant to HRS §§ 286-157.4(3) and 286-157.4(4)[,] Officer Correa informed [Ramacher] of the sanctions of [HRS] § 157.3[,] and [Ramacher] refused to submit to a test of his blood or urine.
>
> 5. Given the test of the preponderance of the evidence, the information provided in paragraph four of the affidavit is insufficient to support the conclusion that [Ramacher] was operating a motor vehicle while under the influence of drugs based on no driving pattern.

Lastly, the district court's written order reads: "Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby dismisses the State's Request for Revocation of Privilege to Drive a Motor Vehicle Upon Refusal to Submit to Drug Testing pursuant to HRS Sections 286-151, 151.5, 157.3, and/or 157.4."[7]

## II. STANDARDS OF REVIEW

### A. Findings of Fact (FOFs) and Conclusions of Law (COLs)

> We review a trial court's FOFs under the clearly erroneous standard.

[7] Although the district court's written order does not indicate whether the matter was dismissed with or without prejudice, the district court calendar states that the "case [was] dismissed with prejudice."

> "A[n] [FOF] is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction in reviewing the entire evidence that a mistake has been committed." State v. Kane, 87 Hawai'i 71, 74, 951 P.2d 934, 937 (1998). . . . An FOF is also clearly erroneous when "the record lacks substantial evidence to support the finding." Alejado v. City and County of Honolulu, 89 Hawai'i 221, 225, 971 P.2d 310, 314 (App. 1998). . . . See also . . . Okumura, 78 Hawai'i [at] 392, 894 P.2d [at] 89. . . . "We have defined 'substantial evidence' as credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Roxas v. Marcos, 89 Hawai'i 91, 116, 969 P.2d 1209, 1234 (1998) . . . (citation, some internal quotation marks, and original brackets omitted). . . .
>
> [State v. ]Kotis, 91 Hawai'i [319,] 328, 984 P.2d [78,] 87 [(1999)] (footnote omitted). . . .
>
> Hawai'i appellate courts review [COLs] de novo, under the right/wrong standard. See Associates Fin. Services Co. of Hawai'i, Inc. [v. Mijol], 87 Hawai'i [19,] 28, 950 P.2d [1219,] 1228 [(1998)]. "Under the right/wrong standard, this court 'examine[s] the facts and answer[s] the question without being required to give any weight to the trial court's answer to it.'" [In re] Estate of Marcos, 88 Hawai'i [148,] 153, 963 P.2d [1124,] 1129 [(1998)] (citation omitted).

Leslie v. Estate of Tavares, 91 Hawai'i 394, 399, 984 P.2d 1220, 1225 (1999) (some brackets added and some in original) (some citations omitted).

B. Statutory Interpretation

> "[T]he interpretation of a statute . . . is a question of law reviewable de novo." State v. Arceo, 84 Hawai'i 1, 10, 928 P.2d 843, 852 (1996) (quoting State v. Camara, 81 Hawai'i 324, 329, 916 P.2d 1225, 1230 (1996) (citations omitted)). See also State v. Toyomura, 80 Hawai'i 8, 18, 904 P.2d 893, 903 (1995); State v. Higa, 79 Hawai'i 1, 3, 897 P.2d 928, 930, reconsideration denied, 79 Hawai'i 341, 902 P.2d 976 (1995); State v. Nakata, 76 Hawai'i 360, 365, 878 P.2d 669, 704, reconsideration denied, 76 Hawai'i 453, 879 P.2d 556 (1994), cert. denied, 513 U.S. 1147, 115 S.Ct. 1095, 130 L.Ed.2d 1063 (1995).
>
> Gray . . . , 84 Hawai'i [at] 144, 931 P.2d [at] 586 (1997) (some brackets added and some in original). See also State v. Soto, 84 Hawai'i 229, 236, 933 P.2d 66, 73 (1997). Furthermore, our statutory construction is guided by established rules:
>
> > When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

> When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. . . .
>
> In construing an ambiguous statute, "[t]he meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." HRS § 1-15(1) [(1993)]. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool.

Gray, 84 Hawai'i at 148, 931 P.2d at 590 (quoting State v. Toyomura, 80 Hawai'i 8, 18-19, 904 P.2d 893, 903-04 (1995)) (brackets and ellipsis points in original) (footnote omitted). This court may also consider "[t]he reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning." HRS § 1-15(2) (1993). "Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another." HRS § 1-16 (1993).

State v. Dudoit, 91 Hawai'i 319, 327, 984 P.2d 78, 86 (1999) (quoting State v. Stocker, 90 Hawai'i 85, 90-91, 976 P.2d 399, 404-05 (1999) (quoting Ho v. Leftwich, 88 Hawai'i 251, 256-57, 965 P.2d 793, 798-99 (1998) (quoting Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Hawai'i 217, 229-30, 953 P.2d 1315, 1327-28 (1998)))).

## III. DISCUSSION

The State contends that the district court erred in dismissing the present matter. Specifically, the State argues that the district court's COL No. 5 was wrong because the statutory scheme for revoking a driver's license for failure to submit to a blood or urine test did not require that the State demonstrate a "driving pattern" that would have given rise to Officer Correa's reasonable belief that Ramacher had been driving under the influence of drugs. We hold that the district court's COL No. 5 was wrong. We agree with the State that the district court erroneously predicated its order dismissing the present matter on the fact that the State did not rely on any "driving

pattern" observed by police officers to establish that Ramacher had been driving under the influence of drugs.

A. The Statutory Scheme Regarding The Revocation Of The Privilege To Drive A Motor Vehicle Upon Refusal To Submit To Drug Testing

Any person who operates a motor vehicle or moped on the public highways of Hawai'i is "deemed to have given consent . . . to a test or tests . . . of the person's breath, blood, or urine for the purpose of determining alcohol concentration or drug content of the person's breath, blood, or urine[.]" HRS § 286-151(a) (Supp. 1999). Pursuant to HRS § 286-151(b) (Supp. 1999),

> [t]he test or tests shall be administered at the request of a police officer having probable cause to believe the person driving or in actual physical control of a motor vehicle or moped upon the public highways is under the influence of intoxicating liquor or drugs, . . . only after:
>
> (1) [a] lawful arrest; and
>
> (2) [t]he person has been informed by a police officer of the sanctions under part XIV and [HRS §§] 286-151.5 and 286-157.3.

If a police officer possesses probable cause to believe that a person has driven under the influence of drugs, in violation of HRS § 291-7, see supra note 2, then "the person shall have the option to take a blood or urine test, or both, for the purpose of determining the drug content [and] . . . the person shall be informed of the sanctions of [HRS §] 286-157.3 [(Supp. 1999)] for failure to take either test."[8] HRS § 286-151(d) (Supp. 1999).

HRS § 286-157.3 applies in the event a person refuses to submit to a blood or urine test requested by a police officer pursuant to § 286-151(d). HRS § 286-157.3 provides in relevant part:

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[8] The statutory sanctions attendant to failing to take either a blood or urine test entail the revocation of the motorist's driver's license for a period of either one, two, or four years, or for life, depending on the person's driving record and the number of "prior drug enforcement contacts" that have been made with that person within the preceding five, seven, or ten years. HRS § 286-157.3(b).

> (a) If a person under arrest refuses to submit to a blood or urine test for the presence of drugs under [HRS §] 286-151(d) . . . , none shall be given except as otherwise provided, but the arresting officer, as soon as practicable, shall submit an affidavit to a district court judge of the circuit in which the arrest was made, stating:
>
> (1) That at the time of arrest, the arresting officer had probable cause to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways while under the influence of drugs;
>
> (2) That the arrested person was informed of the sanctions of this section; and
>
> (3) That the arrested person had refused to submit to a blood or urine test.
>
> (b) Upon receipt of the affidavit, the district court judge shall hold a hearing, as provided in [HRS §] 286-157.4, and shall determine whether the statements contained in the affidavit are true and correct. If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's license, permit, or any nonresident operating privilege as follows . . . .

HRS § 286-157.3 (emphasis added). At the section 286-157.3(b) hearing, the district court is required to "hear and determine":

> (1) Whether the arresting officer had reasonable grounds to believe that the person had been operating a vehicle while under the influence of drugs;
>
> (2) Whether the person was lawfully arrested;
>
> (3) Whether the arresting officer had informed the person of the sanctions of [HRS §] 286-157.3; and
>
> (4) Whether the person refused to submit to a test of the person's blood or urine.

HRS § 286-157.4(b) (Supp. 1999). In this connection,

> there shall be no limit on the introduction of any other competent evidence bearing on the question of whether the person was under the influence of drugs, including but not limited to personal observation by a law enforcement officer of the defendant's manner, disposition, speech, muscular movement, general appearance, or behavior.

HRS. § 286-157.4(c) (Supp. 1999).

B. The District Court's Order Was Erroneous.

Pursuant to the foregoing statutory scheme governing drivers' license revocations, the district court was required to revoke Ramacher's driver's license if the State demonstrated, by

a preponderance of the evidence,[9] that the statements contained in Officer Correa's affidavit were true and correct. In order to fulfill its burden at the hearing, the State was statutorily required to establish: (1) that Officer Correa had reasonable grounds to believe that Ramacher had been driving or was in actual physical control of a motor vehicle upon the public highways while under the influence of drugs; (2) that Ramacher was lawfully arrested; (3) that Officer Correa informed Ramacher of the authorized sanctions if he refused to submit to the requested blood or urine test; and (4) that Ramacher, nonetheless, refused to submit to the requested test. If the State carried its burden, the district court was required to revoke Ramacher's license, pursuant to HRS § 286-157.3(b).[10]

The State's "sole contention" is that the district court's conclusion "that a driving pattern is necessary before an officer can determine that a person is operating a motor vehicle under the influence of drugs is wrong as a matter of law." In pressing its argument, the State asserts that the district court's FOF No. 17, namely, that "[Ramacher] was placed under arrest based on Officer Correa's reasonable belief that [Ramacher] was operating his vehicle under the influence of cannabis," together with FOF Nos. 1 through 16, see supra section I, "support the first two requirements of HRS [§] 286-157.4," to

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[9] The parties do not dispute that, inasmuch as a proceeding to revoke an individual's driver's license pursuant to the implied consent statutes is a civil matter, see, e.g., State v. Uehara, 68 Haw. 512, 515, 721 P.2d 705, 706-07 (1986), the State carried the burden of proving that the contents of Officer Correa's affidavit were true and correct by a preponderance of the evidence. Accord State v. Wilson, 92 Hawai'i 45, 987 P.2d 268 (1999); Gray, supra in text; Kernan v. Tanaka 75 Haw. 1, 856 P.2d 1207 (1993).

[10] The parties do not contest the district court's FOF No. 18, in which the court found that Officer Correa had informed Ramacher of the sanctions for refusing to submit and that Ramacher, nonetheless, refused to submit to the requested testing.

wit, that Officer Correa had reasonable grounds to believe that Ramacher had been driving under the influence of drugs and that Ramacher's arrest was therefore lawful. However, the inquiry into whether Ramacher "was lawfully arrested," see HRS § 286-157.4(b)(2), is not, in itself, dispositive of the question whether Officer Correa possessed "reasonable grounds to believe that [Ramacher] had been operating a vehicle while under the influence of drugs," see HRS § 286-157.4(b)(1), at the time of the arrest. Whereas FOF No. 17 constitutes an express finding that Officer Correa's belief that Ramacher had been driving under the influence of cannabis was reasonable, and, therefore, founded upon "reasonable grounds," it does not speak to the legality of Ramacher's arrest, which turns on such considerations as whether Officer Correa possessed probable cause to believe that Ramacher had committed the offense defined by HRS § 291-7, see supra note 2, and whether the articulable facts supporting the probable cause determination were legally obtained, or, conversely, tainted by prior improprieties committed by the officers during the stop and detention preceding the arrest. Thus, insofar as the State contends on appeal that FOF No. 17 addresses the lawfulness of Ramacher's arrest, the State is incorrect.

The State is correct, however, that FOF No. 17 constitutes a finding that Officer Correa possessed reasonable grounds to believe that Ramacher had been driving under the influence of drugs, in satisfaction of the condition set forth in HRS § 286-157.4(b)(1). The district court's determination that Officer Correa possessed reasonable grounds to believe that Ramacher had been driving under the influence of drugs implicated a mixed question of law and fact and is, therefore, reviewed on appeal "under the clearly erroneous standard because the

conclusion [of law] is dependent upon the [findings of] fact. . . ." Booth v. Booth, 90 Hawai'i 413, 416, 978 P.2d 851, 854 (1999) (quoting Poe v. Hawai'i Labor Relations Board, 87 Hawai'i 191, 195, 953 P.2d 569, 573 (1998) (quoting Price v. Zoning Board of Appeals of City and County of Honolulu, 77 Hawai'i 168, 172, 883 P.2d 629, 633 (1994))) (internal quotation signals omitted).

The district court's FOFs supporting its COL No. 1 that, at the time of the arrest, Officer Correa had reasonable grounds to believe that Ramacher had been driving under the influence of drugs include: (1) Officer Pacheco's initiation of the traffic stop of Ramacher's truck and the officer's attendant observation that Ramacher was in the driver's seat (FOF Nos. 1 and 4); (2) Ramacher's exhibition, during the field sobriety test administered by Officer Correa, of signs of impairment that were inconsistent with alcohol consumption (FOF Nos. 11 through 15); and (3) Ramacher's exhibition of signs of impairment that were consistent with cannabis consumption (FOF No. 16). Inasmuch as the district court's FOFs are supported by substantial evidence and we are not left with a definite and firm conviction that a mistake has been committed, we hold that the district court's determination that Officer Correa had reasonable grounds to believe that Ramacher had been driving under the influence of drugs was not clearly erroneous.

We turn now to the question whether the district court's COL No. 5, which concluded that, in the absence of any evidence of "driving pattern," Ramacher's arrest was not founded upon probable cause, was "wrong." The State contends that COL No. 5 is inconsistent and irreconcilable with COL No. 1, which states in relevant part: "[a]t the time of arrest, Officer Correa had probable cause, according to the contents of his

affidavit, to believe that [Ramacher] was operating a motor vehicle while under the influence of drugs[.]" (Emphasis added). The State reads COL No. 1 as a conclusion that Officer Correa possessed probable cause supporting Ramacher's arrest. The State's reading, however, ignores the fact that COL No. 1 merely acknowledged the legal consequence of the averments set forth in Officer Correa's affidavit, assuming them to be true.

We do not read COL No. 1 as inconsistent with COL No. 5. In COL No. 5, the district court concluded that "the information provided in paragraph four of the affidavit is insufficient to support the conclusion that [Ramacher] was operating a motor vehicle while under the influence of drugs based on no driving pattern." In other words, the district court, expressly disregarding the information contained in paragraph five of the affidavit -- in which Officer Correa enumerated the indicia of impairment consistent with cannabis consumption that he had observed in Ramacher --, concluded that, inasmuch as Officer Pacheco's initial stop of Ramacher was not predicated upon an observation of an erratic driving pattern, Officer Correa's subsequent arrest of Ramacher on the charge of driving under the influence of drugs was not grounded on probable cause and was, therefore, unlawful. Such a determination, although "wrong," is not inconsistent with COL No. 1, which states no more than that Officer Correa averred in his affidavit that he had probable cause to believe that Ramacher had been operating a motor vehicle while under the influence of drugs. When read together, COL Nos. 1 and 5 reflect the district court's conclusion that Officer Correa's affidavit incorrectly stated that the officer had possessed probable cause to support his arrest.

However, the district court was wrong to conclude that, simply because Ramacher's driving pattern did not exhibit any indication that he was impaired, Ramacher could not, after being lawfully stopped for an unrelated traffic violation, be subsequently arrested for driving under the influence of drugs; to the contrary, the facts and circumstances within Officer Correa's knowledge, as conveyed to him by Officer Pacheco, were sufficient, in themselves, to warrant a person of reasonable caution to hold the belief that Ramacher had been driving, or had been in actual physical control of, his truck while under the influence of a drug. See State v. Gustafson, 55 Haw. 65, 69, 515 P.2d 1256, 1259 (1973) ("Officers have probable cause to make an arrest when 'the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a [person] of reasonable caution in the belief that [a crime was being committed].'" (Quoting Carroll v. United States, 267 U.S. 132, 162, 45 S.Ct. 280, 288, 68 L.Ed. 543 (1925) (some brackets added and some in original))).

In Gustafson, this court held, in the context of reviewing a defendant's driver's license revocation following his refusal to submit to a breath or blood test, that an arresting officer had probable cause to arrest the defendant on the charge of driving under the influence of alcohol where the record revealed that: (1) the arresting officer, upon arriving on the scene, observed the defendant's car damaged; (2) the defendant was unsteady on his feet and bore a small cut on his lip; (3) the defendant affirmed he had been involved in an accident, having collided with a telephone pole while driving at a speed of approximately fifteen miles an hour; (4) the officer detected the

odor of alcohol on the defendant's breath; and (5) the defendant refused to answer the question whether he had been consuming intoxicating liquor. Gustafson, 55 Haw. at 68-70, 515 P.2d at 1258-59; see also id. at 70, 515 P.2d at 1259 (Levinson, J., concurring in the judgment that officer had probable cause to arrest).

In State v. Powell, 61 Haw. 316, 603 P.2d 143 (1979), we held that, inasmuch as the initial traffic stop of a defendant's vehicle was not constitutionally unreasonable, and, "[d]uring the course of conversation with [the defendant], the officer came to conclude that appellee was in a drug-induced state of intoxication," the officer's arrest of the defendant on the charge of driving under the influence of drugs was based on probable cause. Id. at 324, 603 P.2d at 149. During his conversation with the defendant, the officer had observed that the defendant's "speech was slurred and unresponsive[,] his eyes were bloodshot and his pupils dilated[,] he appeared unsteady on his feet[,] and his shirt was unbuttoned at the top and bottom," notwithstanding that there "was no indication that [the defendant's] apparent intoxication was attributable to the consumption of alcohol." Id. at 317-18, 603 P.2d at 146. The defendant also admitted to having ingested Valium and gave the officer a prescription bottle labeled "Thorazine," which the defendant removed from his pocket. Id. at 318, 603 P.2d at 146. Although the officer had observed the defendant driving in a deliberate manner -- slowly, pausing ten seconds at stops prior to making turns, turning on a blinker signal two hundred feet prior to an intersection --, thereby leading him to believe that the driver was "either lost, experiencing mechanical difficulties with his car, or intoxicated," we did not rely on the "driving

pattern," in the words of the district court in the present matter, as a factor in our analysis of the officer's probable cause to arrest the defendant. Id. at 317, 323-25; 603 P.2d at 145, 149-50. Cf. State v. Kuba, 68 Haw. 184, 185, 191, 706 P.2d 1305, 1307, 1311 (1985) ("Where the evidence presented before the grand jury was that defendant 1) was unsteady on his feet and appeared intoxicated; 2) admitted he had smoked marijuana; 3) had no alcohol in his blood; and 4) had methaqualone in his pockets, there was sufficient evidence to establish probable cause for indictment charging defendant with Driving Under the Influence of Drugs because a reasonable person would suspect defendant's intoxication was the result of taking drugs.").

In light of the foregoing case law, we hold that the district court was "wrong" to conclude that the failure of Officer Correa's affidavit to aver, and of the State to establish, that Ramacher's driving pattern indicated impairment due to drugs was fatal to the State's request to revoke Ramacher's driver's license. Accordingly, we vacate the district court's FOFs, COLs, and order, filed August 13, 1999, and remand the present matter for further proceedings consistent with this opinion. In an abundance of caution, we emphasize that, in order to determine whether Ramacher's arrest was lawful, the district court must not only address whether his arrest was supported by probable cause (entailing, inter alia, consideration as to whether the statements contained in both paragraphs four and five of Officer Correa's affidavit are true), but also whether probable cause, if any, was unlawfully established.

## IV. CONCLUSION

In light of the foregoing analysis, we vacate the district court's FOFs, COLs, and order, filed on August 13, 1999, and remand the present matter for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, August 14, 2000.

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