

NO. CAAP-14-0000497

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
GARY T. PAIK, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NO. 3DTA-12-01602)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, and Reifurth and Ginoza, JJ.)

Defendant-Appellant Gary T. Paik appeals from the Notice of Entry of Judgment and/or Order, filed January 29, 2014 in the District Court of the Third Circuit, North/South Hilo Division ("District Court").^{1/} Paik was convicted of Operating a Vehicle Under the Influence of an Intoxicant in violation of Hawaii Revised Statutes section 291E-61(a)(3) (Supp. 2010).^{2/}

On appeal, Paik contends that the District Court erred in denying his motion to compel production with regard to service records of the Intoxilyzer machine that was used to determine his intoxication level. Specifically, Paik argues that

given that the Intoxilyzer is a mechanical and electronic . . . measuring device whose functions were inherently subject to deterioration, drift, and environmental influences and that Intoxilyzer serial number 68-011667 was alleged to have remained in uninterrupted service without a single malfunction, adjustment, or re-calibration over the span of nearly four years, the limited discovery requested should have been provided.

In light of the Intoxilyzer service record information provided

^{1/} The Honorable Harry P.N. Freitas presided.

^{2/} "A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle: . . . (3) With .08 or more grams of alcohol per two hundred ten liters of breath[.]" Haw. Rev. Stat § 291E-61(a)(3).

to Paik in this case by the Plaintiff-Appellee State of Hawai'i, the District Court did not err in denying the motion to compel.^{3/} *State v. Ames*, 71 Haw. 304, 315, 788 P.2d 1281, 1287 (1990); *State v. Murakami*, No. CAAP-14-0000735, 2016 WL 6072401, at *2 (Hawai'i App. Oct. 17, 2016); *State v. Elizares*, No. CAAP-14-0000498, 2015 WL 5691390 (Hawai'i App. Sept. 28, 2015), *cert. denied*, No. SCWC-14-0000498, 2016 WL 416476 (Hawai'i Feb. 2, 2016).

Therefore, the Notice of Entry of Judgment and/or Order, filed January 29, 2014 in the District Court of the Third Circuit, North/South Hilo Division, is affirmed.

DATED: Honolulu, Hawai'i, March 30, 2017.

On the briefs:

Stanton C. Oshiro
for Defendant-Appellant.

Presiding Judge

Roland J.K. Talon,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.

Associate Judge

Associate Judge

^{3/} Paik contends that the State's failure to produce the requested evidence violated his rights to due process under *Brady v. Maryland*, 373 U.S. 83 (1963). Paik fails to identify, and we do not discern, where in the record he raised that objection below. Accordingly, this argument is deemed waived. *Enoka v. AIG Hawaii Ins. Co.*, 109 Hawai'i 537, 546, 128 P.3d 850, 859 (2006).