

*** NOT FOR PUBLICATION ***

NO. 23397

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

CAMERON RICHARD HAYASHI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD TRAFFIC NO. 98296657)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Cameron Richard Hayashi (Hayashi) appeals from the October 9, 2003 judgment of the district court of the first circuit, the Honorable George Y. Kimura presiding, convicting him of and sentencing him for driving under the influence (DUI) of drugs [hereinafter, "DUI-drugs"], in violation of Hawai'i Revised Statutes (HRS) § 291-7 (repealed 2000).¹ On

¹ At the time Hayashi was charged, HRS § 291-7 provided, in relevant part:

(a) 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.

(b) A person committing the offense of driving under the influence of drugs shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For a first offense of any offense not preceded within a five-year period by a conviction under this section, by:

(A) A fourteen-hour minimum drug abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court; and

(B) Ninety-day prompt suspension of license with absolute prohibition from operating a motor vehicle

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appeal, Hayashi argues that: (1) the district court erred in denying his demand for a jury trial, inasmuch as DUI-drugs is a constitutionally serious offense; (2) the district court erred in holding that the admissibility of the drug recognition expert's (DRE) testimony required the court to accept the DRE's opinion as true; (3) the district court erred in holding that the State of Hawai'i [hereinafter, "the prosecution"] was not required to prove impairment; and (4) there was insufficient evidence to support his conviction.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that, in light of this court's holding in State v. Sullivan, 97 Hawai'i 259, 36 P.3d 803 (2001), a first offense DUI-drugs is a petty misdemeanor, and, therefore, the right to jury trial does not attach. Inasmuch as Hayashi was charged with a first-offense DUI-drugs, the district court did not err in denying Hayashi's demand for a jury trial. We further hold that: (1) the district court's inartful statement that, "if [Officer Kobayashi's] testimony is accepted, then his opinion

¹(...continued)

- during suspension of license, or he court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in drug treatment programs; and
- (C) Any one or more of the following:
- (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000.

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[regarding impairment] must be accepted" did not amount to an abdication of the district court's role as the trier of fact, inasmuch as (a) it was the prerogative of the district court to believe Officer Kobayashi's testimony and draw reasonable and legitimate inferences from it, and (b) the district court made clear that it considered the totality of the evidence to find Hayashi guilty of DUI-drugs, see State v. Eastman, 81 Hawai'i 131, 913 P.2d 57 (1996); (2) the district court's failure to precisely articulate that impairment was a material element of the offense of DUI-drugs was harmless, inasmuch as (a) it did not render Hayashi's trial fundamentally unfair, (b) substantial evidence supported Officer Kobayashi's conclusion that Hayashi was impaired by drugs, and (c) it is clear beyond a reasonable doubt, that the district court would have found Hayashi guilty absent such omission, see State v. Sprattling, 99 Hawai'i 312, 55 P.3d 276 (2002); and (3) the prosecution adduced sufficient evidence to support Hayashi's conviction of the offense of DUI-drugs, inasmuch as substantial testimony was adduced to support a finding that Hayashi's ability to operate his car in a careful and prudent manner was impaired, see State v. Duncan, 101 Hawai'i 269, 67 P.3d 768 (2003); State v. Valdivia, 95 Hawai'i 465, 24 P.3d 661 (2001). Therefore,

IT IS HEREBY ORDERED that the district court's October 9, 2003 judgment of guilty conviction and sentence, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, April 29, 2004.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for defendant-appellant

Mangmang Qiu Brown,
Deputy Prosecuting Attorney,
for plaintiff-appellee