

NO. 23023

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DEBORAH A.H. JOSHUA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(CASE NOS. TR 29P & 30P of 8/31/99;
CITATION NOS. 4699935MO & 4699936MO)

MEMORANDUM OPINION

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Defendant-Appellant Deborah A. H. Joshua (Joshua) appeals the August 31, 1999, Judgment of the District Court of the First Circuit¹ (the district court), which found Joshua guilty of failing to give information and render aid in violation of Hawaii Revised Statutes (HRS) § 291C-14 (1993),² and of

^{1/} The Honorable Leslie A. Hayashi presided.

^{2/} HRS § 291C-14 provides as follows:

§291C-14 Duty to give information and render aid. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give the driver's name, address, and the registration number of the vehicle the driver is driving, and shall upon request and if available exhibit the driver's license or permit to drive to any person injured in the accident or to the driver or occupant of or person attending any vehicle or other property damaged in the accident and shall give such information and upon request exhibit such license or permit to any police officer at the scene of the accident or who is investigating the accident and shall render to any person injured in the accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the

(continued...)

driving without a license in violation of HRS § 286-102 (1993 & Supp. 2000) (Joshua was originally charged with Driving While License Suspended or Revoked, in violation of HRS § 286-132 (Supp. 2000), which charge was amended by the State on March 12, 1999, to driving without a license).

The district court sentenced Joshua as follows:

(1) failing to give information and render aid: a \$200.00 fine, a \$7.00 payment to the Driver's Education Fund, and restitution in an amount to be determined by District Court Probation; and

(2) driving without a license: a \$150.00 fine, a \$7.00 payment to the Driver's Education Fund, and a \$25.00 Criminal Injuries Compensation Fee assessment.

On appeal, Joshua contends that the district court lacked jurisdiction over her and that insufficient evidence supported a finding that she was the driver of the vehicle. We disagree with Joshua's contentions, but hold there was plain

^{2/}(...continued)

injured person; provided that if the vehicle involved in the accident is a bicycle, the driver of the bicycle need not exhibit a license or permit to drive.

(b) In the event that none of the persons specified is in condition to receive the information to which they otherwise would be entitled under subsection (a), and no police officer is present, the driver of any vehicle involved in the accident after fulfilling all other requirements of section 291C-12, 291C-12.5, or 291C-12.6, and subsection (a) of this section, insofar as possible on the driver's part to be performed, shall forthwith report the accident to the nearest police officer and submit thereto the information specified in subsection (a).

error committed by the district court as to Joshua's conviction for driving without a license.

I. BACKGROUND

On the first day of trial (August 25, 1999), Joshua orally moved the district court to dismiss the case for lack of jurisdiction. The district court denied the motion. On the second day of trial (August 31, 1999), Joshua submitted Exhibits "A" and "B" to the district court to support her claim that the court lacked jurisdiction. Exhibit "A" is a photocopy of a Certificate of Live Birth issued by the Department of Health, Territory of Hawaii, and Exhibit "B" is a photocopy of a State of Hawaii Identification Certificate (State I.D. card).

On August 25, 1999, Dr. Richard Liu (Dr. Liu) testified first for the State. On February 19, 1999, Dr. Liu was involved in a traffic accident at approximately 7:30-7:40 p.m. while driving town bound on the H-1 Freeway just past the Mililani/Wahiawa exit. Dr. Liu saw a speeding white car, a Lincoln (the Lincoln), in his lane approaching his car from behind. The Lincoln moved to Dr. Liu's left side, hit the median wall, and bounced back, hitting the left side of Dr. Liu's car. Dr. Liu then saw the Lincoln hit two or three cars ahead of him, spin three times, and come to a stop, blocking three lanes of the five-lane highway.

Dr. Liu testified he tried to read the license plate number of the Lincoln while it was stopped, but the Lincoln was

driven away at a slow speed. When the Lincoln was about a half mile away, Dr. Liu saw it accelerated to 40-50 miles per hour.

Dr. Liu testified that an off-duty police officer (the officer) was driving one of the cars involved in the accident ahead of him. Dr. Liu and the officer followed the Lincoln after it left the scene. Dr. Liu was behind and the officer was on the left side of the Lincoln, which was in the right lane. The Lincoln then moved into the left lane and sped off. Although he was unable to see the driver's face, Dr. Liu was able to obtain the Lincoln's license plate number, which he eventually gave to the officer.

Dr. Liu testified that he and the officer then pulled off the road. Dr. Liu was unable to exit his car from the driver's side because there was a "big hole on [the] driver's side door" and the accident had caused the driver's side air bag to deploy. Dr. Liu's car door was not in that condition previous to the accident. The officer borrowed Dr. Liu's cellular phone to report the incident to police dispatch. Dr. Liu approximated that it was 10-15 minutes later when a uniformed officer arrived at the area where Dr. Liu's car was parked. Dr. Liu testified that receipts shown to him in court indicating repairs totaling \$7,168.29 to his car after the accident were correct. Dr. Liu

testified the driver of the Lincoln that hit his car never stopped or exchanged information with him.

Barbara Jean Pettus (Pettus) testified that on or about February 19, 1999, she rented a white Lincoln car (Lincoln). Pettus described her relationship with Joshua as "family" and stated that they had lived together. On February 19, Pettus first noticed the Lincoln was missing at approximately 12:00 or 1:00 p.m., and she stated that it was not there that afternoon. Pettus testified that the keys for the Lincoln were "somewhere in the house," although she did not look for them after noticing that the car was missing. The only people who had access to the Lincoln's keys were Pettus and her daughter, Nicole Pettus (Nicole). When the police arrived at her door at approximately 8:00 or 9:00 p.m., Pettus noticed the Lincoln had been returned to her house. Pettus did not actually see Joshua return home, but recalled that at approximately 8:00 or 9:00 p.m. she was home. Pettus confirmed to the police officers that she had rented a car that day; when they informed her it had been involved in an accident, Pettus was "shocked." The police officers showed Pettus the damage to the Lincoln, which damage Pettus recalled was on "the side and maybe the bumper." Pettus testified the Lincoln was undamaged prior to that time.

Pettus testified she did not give anyone permission to drive the Lincoln on February 19, 1999. When Pettus saw the Lincoln was missing, she assumed one of the adults in the house

had taken the car. Pettus knew Nicole had not taken the Lincoln because Nicole was with her that day, and the only other adult in the house was Joshua. Joshua had never previously used Pettus' car.

Under cross-examination, Joshua showed Pettus a Honolulu Police Department (HPD) 252 witness statement form, which stated that Pettus told the responding police officer Joshua had been the driver of the Lincoln and Pettus had not given Joshua permission to drive the Lincoln. Pettus testified in court that both statements made to the police officer were false.

On the second day of trial, August 31, 1999, Nicole testified that on February 19, 1999, she talked with police officers at her home regarding a car rented by Pettus (rental car). At approximately 12:00 p.m., Nicole and Pettus went to the store for approximately one to one-and-a-half hours. When Nicole and Pettus returned from the store, the rental car was no longer at the residence.

Nicole testified that Joshua is her hanai "aunty" and she has known Joshua "ever since I was a kid." Joshua lived at Nicole's house "off and on" and was at the house on the date of the accident. Nicole noticed that Joshua returned to the house sometime in the early evening before the police officers arrived.

The rental car was back at Nicole's residence after Joshua returned. When Nicole and Pettus returned from the store, they did not call the police to report the rental car as stolen because it was obvious to them that Joshua had taken the car. Nicole did not see Joshua drive the rental car.

Police Officer Billy Junior Masaniai (Officer Masaniai) testified that he was on duty on February 19, 1999, assigned to patrol the Kalihi area. Police dispatch had given Pettus's address to Officer Masaniai after dispatch had established through Hertz Rental Car that a car involved in an accident earlier that day had been rented to Pettus; the car rented by Pettus was a "white Lincoln Town car" (Lincoln).

Officer Masaniai testified he went to Pettus's address at approximately 8:40 p.m. to ascertain who had been the driver of the Lincoln. Police dispatch told Officer Masaniai where the damages should be on the Lincoln, and Officer Masaniai saw the Lincoln parked in front of Pettus' residence with those damages. Officer Masaniai went to the residence, knocked on the door, and asked for Barbara Jean Pettus, the renter of the Lincoln.

Officer Masaniai testified that the woman who answered the door first stated she was Barbara Pettus; in court, Officer Masaniai identified the woman at the door as Joshua. Eventually, Joshua stated she was not Pettus, but that Pettus was inside the residence. When Officer Masaniai asked Joshua if she

were the driver of the Lincoln, she hesitated and then stated that someone named Debbie Joshua was the driver of the Lincoln. Joshua also mentioned a driver's name as "Jerry."

Officer Masaniai testified that Joshua had "obviously been drinking because I could smell the smell of an alcoholic beverage . . . coming from her -- her person." Officer Masaniai spoke with Nicole, who "kinda' cleared things up" by explaining that her mother was Pettus and then identifying Joshua as her aunty. Nicole explained that Pettus had picked her up earlier that day and when they returned home, the Lincoln was no longer parked in front of the house. Nicole stated that after Joshua came back to the house later, she and Pettus noticed the Lincoln was back. Officer Masaniai also talked with Pettus who stated that she did not give anyone permission to drive the Lincoln, but she could not or would not tell him who the driver was.

Officer Masaniai testified he observed damages to the Lincoln that included dents and scratches along the right side, from the front bumper all the way to the rear bumper. The damages to the Lincoln were consistent with the damages the "fleeing vehicle" would have incurred according to the information relayed to Officer Masaniai from police dispatch.

Police Officer Mike Metzger (Officer Metzger) testified that on February 19, 1999, he issued citations to Joshua for driving without a license and for failing to render aid and stop at an accident that occurred on the "H-1 Waimalu at the

Pearlridge area" in the City and County of Honolulu, State of Hawaii.

Officer Metzger testified that on February 19, 1999, his assignment was patrol; he was in the Field Training Officer Program, and Officer Masaniai was his rider. Officer Metzger first spoke to Joshua on that date outside Pettus's residence. He had been sent to the residence to ascertain the identity of the person who had fled from the accident, read the person his/her rights, get a statement, and cite for any violations. The address of the residence had been obtained from a license plate check that "came out" to Hertz Rental Car; Hertz had then given Pettus's address to HPD. When Officer Metzger arrived at the residence and asked to speak with the person who rented the car (Barbara Pettus), Joshua responded, "Oh. I'm Barbara." Officer Metzger asked Joshua if she knew who was operating the vehicle, and she responded that "Joshua" was and indicated that Joshua was in the house.

Officer Metzger testified he went into the house and spoke to Pettus and Nicole and asked if they knew who was operating the rental car. Officer Metzger explained that the woman outside the house said that Joshua was driving it, and Pettus and Nicole said, "That's Debbie." Officer Metzger explained that the woman outside had used Pettus's name, so he

asked Pettus to provide identification to verify who she was. Pettus and Nicole were not positive about who was driving the car, but they believed Joshua was. Officer Metzger asked Joshua who she was, "and for the longest time she -- she wouldn't admit to who -- that her name was Debbie." Officer Metzger checked on Joshua via police dispatch and determined that she did not have a driver's license. Joshua refused to sign the citations issued to her by Officer Metzger. The State entered into evidence State's Exhibit "1," a certified, signed declaration from the Licensing Administrator of the Division of Motor Vehicles and Licensing, City and County of Honolulu, certifying that Deborah H. Joshua did not have a driver's license on February 19, 1999.

Under cross-examination, Officer Metzger testified that while he did not see Joshua driving the rental car, his investigation indicated she was the operator of the vehicle involved in the accident.

Following Officer Metzger's testimony, the State rested, and Joshua made a motion for a judgment of acquittal. The district court denied the motion, ruling:

Okay. At this time, then, the Court is ready to rule. Having heard the testimony of the State's witnesses, as well as having heard argument of Counsel and that of the defendant, the Court does find that the State has met its burden of proof beyond a reasonable doubt to show that the defendant is guilty of failing to give aid and render aid at the scene of an accident, and also driving without a license on February 19th, 1999, in the City and County of Honolulu.

The Court does find that defendant was the driver of the vehicle that was rented to Miss Barbara Pettus, which

was subsequently involved in an accident with Richard Liu (sic), who sustained damage to his vehicle.

And, so, the Court does find that the State has met its burden of proof beyond a reasonable doubt. So, the Court does find that you are guilty of these offenses. Your motion for judgment of acquittal is denied.

II. STANDARDS OF REVIEW

A. Jurisdiction

The question of whether the Hawaii courts have jurisdiction to consider matters brought before them is a question of law. State v. Lorenzo, 77 Hawaii 219, 220, 883 P.2d 641, 642 (App. 1994) (citing United States v. Lorenzo, 995 F.2d 1448, 1456 (9th Cir.), cert. denied, 510 U.S. 881, 114 S. Ct. 225, 126 L. Ed. 2d 180, reh'g denied, 510 U.S. 1006, 114 S. Ct. 589, 126 L. Ed. 2d 487 (1993)). Questions of law are reviewable de novo applying the right/wrong standard. Lorenzo, 77 Hawaii at 220, 883 P.2d at 642.

B. Sufficiency of the Evidence

In deciding whether to uphold the district court decision, we must review the evidence adduced in the district court "in the strongest light for the prosecution" when evaluating the "legal sufficiency of such evidence to support a conviction." State v. Batson, 73 Haw. 236, 248, 831 P.2d 924, 931, reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992). "The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact." 73 Haw. at 248,

831 P.2d at 931. "'Substantial evidence' as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a man of reasonable caution to support a conclusion." 73 Haw. at 248-49, 831 P.2d at 931.

C. Plain Error

"We may recognize plain error when the error committed affects substantial rights of the defendant." State v. Cullen, 86 Hawai'i 1, 8, 946 P.2d 955, 962 (1997) (internal quotation marks omitted). See also Hawai i Rules of Penal Procedure (HRPP) Rule 52(b) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); State v. Davia, 87 Hawai'i 249, 253, 953 P.2d 1347, 1351 (1998). "This court will apply the plain error standard of review to correct errors which seriously affect the fairness, integrity, or public reputation of judicial proceedings, to serve the ends of justice, and to prevent the denial of fundamental rights." State v. White, 92 Hawai'i 192, 198, 990 P.2d 90, 96 (1999) (internal quotation marks and brackets omitted).

III. DISCUSSION

A. The District Court Had Jurisdiction.

The issues raised on appeal are whether the trial court had jurisdiction over Joshua and whether its decision is supported by substantial evidence.

Joshua contends she is a sovereign American citizen not subject to the laws of the State of Hawaii. Hawaii Revised Statutes § 701-106 (1993) provides, in relevant part, as follows:

§701-106 Territorial applicability. (1) Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by the person's own conduct or the conduct of another for which the person is legally accountable if:

- (a) Either the conduct or the result which is an element of the offense occurs within this State[.]

The district court convicted Joshua of violating HRS §§ 291C-14 and 286-102. HRS § 291C-14 provides, in relevant part, as follows:

§291C-14 Duty to give information and render aid.

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give the driver's name, address, and the registration number of the vehicle the driver is driving[.]

(Emphasis added.) The statute applies to the driver of any vehicle regardless of citizenship.

HRS § 286-102 provides, in relevant part, as follows:

§286-102 Licensing. (a) No person . . . shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

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- (3) Passenger cars of any gross vehicle weight rating[.]

(Emphasis added.) The statute prohibits all unlicensed persons from driving passenger cars upon the roadways of the state

regardless of citizenship. Accordingly, both statutes apply to Joshua.

In State v. French, 77 Hawai i 222, 883 P.2d 644 (App. 1994), this court held:

As part of the exercise of its police power, a state may, in the absence of national legislation, rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles . . . [a]nd to this it end may require the registration of such vehicles and the licensing of their drivers.

Id. at 231, 883 P.2d at 653 (internal quotation marks omitted).

The district court properly exercised its jurisdiction in hearing the matter before it.

B. There Was Substantial Evidence to Support Joshua's Conviction.

Joshua also contends there was insufficient evidence to support a finding that she was the driver of the rental car involved in the accident because no witnesses were called who positively identified her.

In deciding whether to uphold the district court's decision, we must review the evidence adduced in the district court "in the strongest light for the prosecution" when evaluating the "legal sufficiency of such evidence to support a conviction." Batson, 73 Haw. at 248, 831 P.2d at 931. "The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact." 73 Haw. at 248, 831 P.2d at 931. Furthermore, it is "for the trial judge as factfinder to

assess credibility of witnesses, including defendants, and to resolve all questions of fact. Lono v. State, 63 Haw. 470, 473, 629 P.2d 630, 633 (1981).

To support a conviction for violating HRS § 291C-14, the State was required to prove that (1) Joshua was the driver of a vehicle involved in an accident, (2) the accident resulted in injury to or death of a person or damage to any vehicle, and (3) Joshua failed to provide information and render aid. HRS § 291C-14. The State adduced evidence from Pettus and Nicole that Joshua was the driver of the rental car. Furthermore, when Joshua first identified herself as "Barbara," she said someone named "Joshua" was driving the rental car involved in the accident.

"The trier of fact may draw all reasonable and legitimate inferences and deductions from the evidence adduced from admitted or known facts, and those findings of the trial court will not be disturbed unless clearly erroneous." Lono, 63 Haw. at 473-74, 629 P.2d at 633.

There was substantial evidence that Joshua was the driver of the rental car involved in the accident, fled the scene, and failed to provide information and aid (testimony of Dr. Liu).

To support a conviction for violating HRS § 286-102, the State was required to prove that Joshua was driving without a current license. State's Exhibit 1 proved that on February 19, 1999, Joshua was not licensed to drive in the State of Hawaii.

There was substantial evidence that Joshua was driving without a license in violation of HRS § 286-102.

C. The District Court Committed Plain Error in Allowing the Amended Charge.

However, the amended charge against Joshua warrants further discussion under plain error analysis. Joshua was originally charged with Driving While License Suspended or Revoked in violation of HRS § 286-132, which charge was amended by the State on March 12, 1999, to driving without a license in violation of HRS § 286-102. Joshua was not present at the March 12, 1999, hearing.³

A court "may permit a charge other than an indictment to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced." HRPP Rule 7(f) (emphasis added). The test "is conjunctive, and amendment of a charge is improper unless both requirements are satisfied." State v. Matautia, 81 Hawaii 76, 81, 912 P.2d 573, 578 (App. 1996). The determining factor of whether the amended charge is an "additional or different offense" under HRPP Rule 7(f) is whether it is an included offense of the original charge. Id.

In Matautia, this court found reversible error where an amended charged offense failed to meet the requirements of HRPP Rule 7(f). This court held that driving without a license is not an included offense of Driving While License Suspended or Revoked

^{3/} Per Diem District Court Judge James H. Dannenberg presided.

because, under HRS § 701-109(4) (a) (1993),⁴ "[p]roof of the elements of the driving-while-license-suspended offense will not automatically establish the elements of the driving-without-a-license offense." Matautia, 81 Hawaii at 83, 912, P.2d at 580. This court also held that HRS § 701-109(4) (b) (1993) was not relevant to an included-offense analysis since the amended driving without a license charge did not allege an attempt to commit the charged offense. Finally, we concluded that driving without a license was not an included offense of Driving While License Suspended or Revoked under an HRS § 701-109(4) (b) and (c) (1993) analysis. This court also held in Matautia that the amended charge was improper because the second requirement under HRPP Rule 7(f) was not satisfied in that substantial rights of the defendant were prejudiced.

^{4/} § 701-109(4) provides as follows:

§701-109 Method of prosecution when conduct establishes an element of more than one offense.

. . . .

(4) A defendant may be convicted of an offense included in an offense charged in the indictment or the information. An offense is so included when:

- (a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
- (b) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or
- (c) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a different state of mind indicating lesser degree of culpability suffices to establish its commission.

In the present case, the charged offense was amended at the March 12, 1999, hearing when Joshua was not present. At the April 30, 1999, arraignment and plea, Joshua pled not guilty to the amended offense. We need not address the question of whether Joshua's substantial rights were prejudiced because the district court erred in amending the Driving While License Suspended or Revoked charge (HRS § 286-132) to driving without a license (HRS § 286-102), contrary to the provisions of HRPP Rule 7(f) and our holding in Matautia.

IV. CONCLUSION

Based on the foregoing, we reverse the part of the August 31, 1999, Judgment of the District Court that convicted and sentenced Joshua for violating HRS § 286-102 (driving without a license) and affirm the part of the Judgment convicting and sentencing Joshua for violating HRS § 291C-14 (Duty to Give Information and Render Aid).

DATED: Honolulu, Hawaii, October 22, 2001.

On the briefs:

Deborah A.H. Joshua,
defendant-appellant pro se.

Acting Chief Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge