

NO. 24363

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KAWIKA PATRICK AGOSTO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Traffic Nos. 000475328, 000475409, and 000475410)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Kawika Patrick Agosto (Agosto) appeals from the May 17, 2001 Judgment by the District Court of the First Circuit (the district court), Judge Russell Blair presiding, convicting and sentencing him for Driving Under the Influence of Alcohol (DUI), in violation of Hawaii Revised

Statutes (HRS) § 291-4(a) (Supp. 2000),¹ and Driving Without a License (DWOL), in violation of HRS § 286-102(a) (1993).²

Although the record on appeal contains substantial circumstantial evidence upon which the district court could have concluded that Agosto had committed the DUI and DWOL offenses on the evening of December 14, 2000,³ the district court apparently

^{1/} Hawaii Revised Statutes (HRS) § 291-4(a) (Supp. 2000) stated as follows:

Driving under the influence of intoxicating liquor.

- (a) A person commits the offense of driving under the influence of intoxicating liquor if:
- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty; or
 - (2) The person operates or assumes actual physical control of the operation of any vehicle with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath.

^{2/} HRS § 286-102(a) (1993) stated, in relevant part:

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.

^{3/} There was testimony, for example, that: Defendant-Appellant Kawika Patrick Agosto (Agosto) was sitting in the driver's seat of a car parked on the wrong side of the street; the car's hood was hot enough for the engine to have been running for a long time; Agosto admitted to two police officers that he had driven the car down the street from his mother's house; Agosto begged the police officers to give him a break; there was a strong odor of alcohol coming from the area around the car; Agosto appeared to be under the influence of alcohol and subsequently failed various field sobriety tests; Agosto admitted to the officers that he had been drinking on the night in

(continued...)

accepted the defense version of the facts⁴ and convicted Agosto of DUI and DWOL solely based on its determination that Agosto, despite knowing that he had been drinking and did not have a driver's license at the time, turned on the ignition of a car at the direction of police officers.

We disagree with the district court's legal conclusion that merely turning on a car's ignition at the direction of police officers constitutes DUI or DWOL within the meaning of HRS §§ 291-4 and 286-102. Accordingly, we reverse the May 17, 2001 Judgment of the district court.

DATED: Honolulu, Hawai'i, January 27, 2003.

On the briefs:

Randall K. Hironaka,
Deputy Public Defender,
State of Hawai'i for
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Daniel H. Shimizu,
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^{3/} (...continued)
question; and it was undisputed that Agosto's driver's license had been previously suspended. Additionally, the defense witnesses testified to very inconsistent versions of what transpired on the evening in question, thus placing their credibility in question.

^{4/} At trial, Agosto, his mother, and his aunt all testified that on the evening in question, Agosto had never driven the car, which belonged to his mother, but was merely sitting in the car while his mother went to a friend's house to get help because the car would not start. Agosto admitted that he had been drinking with a bunch of friends along Palm Street but testified that he had lied when he told the police officers that he had driven the car a short distance and had lied only because he was scared and feared being returned to the Oahu Community Correctional Center.