NO. 25888

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
JON KAAPUNI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NOS. TR 4 & TR 5: 05/13/03,
CITATION NOS. 00155623M & 00145612M)

MEMORANDUM OPINION
(By: Burns, C.J., Foley and Nakamura, JJ.)

Defendant-Appellant Jon Hans Kaapuni (Kaapuni) appeals from the November 21, 2003 judgment, entered in the District Court of the Second Circuit by Judge Douglas H. Ige, convicting Kaapuni of (1) Driving Under the Influence of Intoxicating Liquor (DUI), Hawaii Revised Statutes (HRS) § 291-4 (Supp. 2001), and (2) Inattention to Driving (ITD), HRS § 291-12 (Supp. 2003) and sentencing him as follows:

1. For the DUI, complete 72 hours of community service, complete 14 hours in an alcohol abuse rehabilitation program, obtain a substance abuse evaluation at his own expense and complete any treatment that is recommended, and an absolute suspension of driver's license for 30 days with an additional 60 days' suspension with permission to drive to and from work, for work related purposes, and for classes. Kaapuni was also ordered to pay a $400 fine, $25 to the criminal injuries compensation

fund, $100 for a driver education assessment, $7 to the driver education fund, $20 to the "ADF" pursuant to HRS § 607-4(8) (Supp. 2003), and the $275 cost of the blood analysis.

2. For the ITD, pay a $100 fine, $25 to the criminal injuries compensation fund, and $7 to the driver education fund.

BACKGROUND

The incident occurred on June 10, 2001. Kaapuni was charged on August 30, 2001. On November 23, 2001, Kaapuni filed a Motion to Suppress Results of Blood Test. This motion was heard on January 22, 2002. On March 12, 2002, the court entered its Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Suppress Results of Blood Test. In a December 9, 2002 Summary Disposition Order entered in appeal no. 25107, the Hawai‘i Supreme Court vacated the March 12, 2002 findings of fact, conclusions of law and order and remanded. The trial was held on April 22, 2003 and May 13, 2003. At the conclusion of the State's case, Kaapuni moved for a judgment of acquittal. After this motion was denied, Kaapuni did not present any evidence.

Kaapuni filed a notice of appeal on June 9, 2003. This appeal was assigned to this court on June 3, 2004.

FACTS

On June 10, 2001, at 12:11 a.m., at the intersection of Maunaloa Highway and Puupeelua Avenue, a male living nearby (the

neighbor) "heard the sound, the crash." When the neighbor "went to the accident scene [Kaapuni] was out of his car[.]" The neighbor "asked [Kaapuni] if he was all right, if anybody else was in the vehicle with him." Kaapuni "told [the neighbor] no and . . . he was all right." The "[p]olice came maybe about five minutes after. Minimum five minutes."

The one police officer who testified at the trial was at the scene "for a brief moment, then [the officer] was assigned to another traffic accident." While he was there, the officer "observed a black vehicle in the brush area just south of the intersection." He saw Kaapuni "towards the rear of the vehicle leaning against the back." The officer noticed that Kaapuni "had slurred speech when he was talking and that [Kaapuni's] eyes were bloodshot, watery." He saw Kaapuni attempt "to walk towards [him] but couldn't keep his balance and ended up just leaning against the vehicle." He was not "aware of whether . . . Kaapuni had any injuries that night." He "honestly could not tell" "whether . . . Kaapuni was intoxicated that night[.]"

On June 10, 2001, a blood sample (the Sample) was taken from Kaapuni by a technician at the hospital and turned over to a police officer. The Sample was stored at the Molokai Police Station. On August 15, 2001, the chief technologist at Maui Memorial Medical Center received the Sample from a police officer and placed it in a hospital refrigerator. On August 15, 2001,

the chief technologist gave the Sample to a courier to be transported to St. Francis West Hospital (SFWH) for testing. On August 16, 2001, a medical technologist at Clinical Laboratories of Hawai‘i at SFWH received the Sample from the courier service and placed it in the SFWH tox refrigerator. On August 16, 2001, the medical technologist at Clinical Laboratories of Hawai‘i at SFWH took the Sample from the SFWH tox refrigerator. The Sample was in a tube not sealed by security tape. The tube was in a sealed "biohazard bag", a Ziploc-type bag with a pouch on the outside with a pocket. The bag was sealed by security tape. The Sample was tested and revealed 0.229 grams of ethanol per 100 milliliters of whole blood.

DISCUSSION

1.

Kaapuni contends that the Sample was insufficient evidence of his DUI because the State had failed to establish the proper chain of custody of the Sample to ensure that it had not been tampered with or compromised in any way that might affect the validity of the test results. Upon a review of the record, we disagree.

2.

Kaapuni contends that the record lacks the substantial evidence required to find him guilty of ITD. We agree.

HRS § 291-12 (2003) states as follows:

> **Inattention to driving.** Whoever operates any vehicle without due care or in a manner as to cause a collision with, or injury or damage to, as the case may be, any person, vehicle or other property shall be fined not more than $500 or imprisoned not more than thirty days, or both.

HRS § 701-107 (1993) states, in relevant part, as follows:

> **Grades and classes of offenses.** (1) An offense defined by this Code or by any other statute of this State for which a sentence of imprisonment is authorized constitutes a crime. Crimes are of three grades: felonies, misdemeanors, and petty misdemeanors. . . .
>
> . . . .
>
> (4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined by a statute other than this Code which provides that persons convicted thereof may be sentenced to imprisonment for a term of which the maximum is less than one year.

HRS § 701-114 (1993) states as follows:

> **Proof beyond a reasonable doubt.** (1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:
>
> (a) Each element of the offense;
> (b) The state of mind required to establish each element of the offense;
> (c) Facts establishing jurisdiction;
> (d) Facts establishing venue; and
> (e) Facts establishing that the offense was committed within the time period specified in section 701-108.
>
> (2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

Kaapuni does not dispute that he was the operator of the vehicle when it went off the road. He contends that the facts do not support a finding beyond a reasonable doubt that he (a) operated the vehicle without due care, or (b) "in a manner as to cause a collision[.]" We agree.

In State v. Mitchell, 94 Hawai‘i 388, 15 P.3d 314 (2000), the only facts were that (a) the car Mitchell was driving "plowed into the rear" of the vehicle in front of him that "was stopped in traffic[,]" Id. at 401, 15 P.3d at 327, and (b) when that happened, (i) Mitchell was under the influence of alcohol, and (ii) both vehicles were damaged. Following the precedent of State v. Reyes, 57 Haw. 533, 560 P.2d 114 (1977) and State v. Tamanaha, 46 Haw. 245, 377 P.2d 688 (1962), this court concluded that those facts were sufficient to support a conviction of ITD.

In Kaapuni's case, even when the evidence is viewed most favorably to the State, the only facts are that (a) the car Kaapuni was driving went off the side of the road at an intersection, (b) there was a sound of a crash, (c) when facts (a) and (b) above happened, Kaapuni was under the influence of alcohol, but (d) the crash did not cause any personal injury or property damage. These facts are compatible with sundry legitimate reasons why Kaapuni intentionally drove off the side of the road. Therefore, we conclude that they are insufficient to support a finding that they are the result of Kaapuni's inattention to driving.

CONCLUSION

We affirm the part of the November 21, 2003 judgment that convicts and sentences Defendant-Appellant Jon Hans Kaapuni for Driving Under the Influence of Intoxicating Liquor, HRS § 291-4 (Supp. 2001).

We reverse the part of the November 21, 2003 judgment that convicts and sentences Defendant-Appellant Jon Hans Kaapuni for Inattention to Driving, HRS § 291-12 (Supp. 2003).

DATED: Honolulu, Hawai‘i, February 11, 2005.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for Defendant-Appellant.

Chief Judge

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

Associate Judge

Associate Judge