

NOT FOR PUBLICATION

NO. 26046

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROSS M. HALSTED, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Traffic No. 5452368MO)

MEMORANDUM OPINION

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

Defendant-Appellant Ross M. Halsted (Halsted) appeals from the Judgment entered on October 17, 2003, in the District Court of the First Circuit (district court). After a bench trial before the Honorable Barbara P. Richardson, Halsted was convicted of failing to return to and remain at the scene of an accident until the required information was exchanged in violation of Hawaii Revised Statutes (HRS) § 291C-13 (1993). Judge Richardson sentenced Johnson to pay a \$100 fine and a \$7 driver's education fee.

On appeal, Halsted claims that 1) the failure of HRS § 291C-13 to define the phrase "scene of the accident" renders the statute unconstitutionally vague; and 2) there was insufficient evidence to support his conviction. After a careful review of the record and the briefs submitted by the parties, we conclude that Johnson's claims are without merit.

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I.

Halsted was convicted of violating HRS § 291C-13 which provides in pertinent part:

The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

HRS § 291C-14 (1993)¹, in turn, requires that a driver involved in an accident resulting in damage to another vehicle shall give his or her name, address, and vehicle registration number to the other vehicle's driver or occupant. HRS § 291C-14 further provides that if none of the people in the other vehicle are in condition to receive this information, the driver shall forthwith report the accident to the nearest police officer.

¹ Hawaii Revised Statutes (HRS) 291C-14 (1993) provides in relevant part:

(a) The driver of any vehicle involved in an accident resulting in . . . 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 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

(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).

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Because Halsted raises his vagueness challenge for the first time on appeal, we review his claim under the plain error standard. We conclude that the phrase "scene of the accident" as used in HRS § 291C-13 is not unconstitutionally vague as applied to Halsted's conduct. State v. Bates, 84 Hawai'i 211, 221-22, 933 P.2d 48, 58-59 (1997) (concluding that vagueness challenges that do not implicate First Amendment freedoms must be examined in light of the defendant's particular conduct). The plain and ordinary meaning of the phrase "scene of the accident" is the place or location where the accident occurred. See Sheldon v. State, 100 S.W.3d 497, 500 (Tex. Ct. App. 2003).

Even under Halsted's version of what happened, he drove beyond the location of the accident, past a small alley, and into the parking lot of a 7-Eleven. Halsted admitted that he did not return to the location of the accident. Instead, Halsted testified that he looked back "at the scene" and "to where the incident had occurred." After waiting awhile, Halston drove home without exchanging any information with the other driver or attempting to contact the police.

We conclude that the phrase "scene of the accident" as used in HRS § 291C-13 is sufficiently precise to give a person of ordinary intelligence reasonable notice of what the law requires and to avoid arbitrary and discriminatory enforcement. Bates, 84 Hawai'i at 220-21, 933 P.2d at 57-58. Halstead had fair notice

of what he was required to do to comply with the law, namely, return to the location of the accident and remain there until he exchanged the specified information with the other driver. Other states construing statutes similar to HRS § 291C-13 which contain the phrase "scene of the accident" have likewise concluded that the statutes were not unconstitutionally vague. Sheldon, 100 S.W.3d. at 499-501; Commonwealth v. Kinney, 863 A.2d 581, 587-88 (Pa. Super. Ct. 2004).

II.

Halsted claims that there was insufficient evidence to support his conviction. In particular, he argues that there was insufficient evidence that he "left the scene of the accident," and, alternatively, that even if he did leave the scene, there was insufficient evidence that he did so intentionally, knowingly, or recklessly.

We conclude there was sufficient evidence to support Halsted's conviction. By his own admission, Halsted drove from where the accident occurred to a 7-Eleven parking lot and then "looked back at the scene." This was sufficient to show that Halsted did not stop at the scene of the accident. We note that Halsted's failure to stop at the accident scene was not dispositive since HRS § 291C-13 permits one to stop beyond the scene of the accident where necessary to avoid obstructing traffic. HRS § 291C-13, however, requires a driver involved in

an accident to return forthwith to the scene of the accident and to remain there until the specified information is provided to the other driver.

The other driver testified that after the accident, she motioned to Halsted to pull over, but that Halsted laughed at her and drove away. After parking her car, the other driver went back to where the accident occurred and walked up the road toward the 7-Eleven looking for Halsted. When Halstead failed to appear, the other driver called the police who arrived seven to ten minutes later. Halsted never gave his name, address, or vehicle registration number to the other driver. In addition to the testimony of the other driver, Halsted's own testimony showed that he did not go back to the location of the accident and that he did not provide the required information to the other driver. There was sufficient evidence that Halsted violated HRS § 291C-13 with the requisite mens rea.

III.

The district court found Halsted guilty after a bench trial on April 21, 2003, and sentenced him on July 24, 2003. Halsted's conviction and sentence were noted on the district court's July 24, 2003 calendar. The Notice of Entry of Judgment filed on October 17, 2003, however, reflected Halsted's offense and sentence, but neglected to indicate whether or how he had been adjudged guilty. In State v. Graybeard, 93 Hawai'i 513,

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518, 6 P.3d 385, 390 (App. 2000), this court held that a judgment with a similar omission did not deprive this court of jurisdiction over the appeal because the fact of the conviction could be inferred. We affirm Halsted's conviction and sentence, but remand the case to the district court for entry of an amended judgment showing that Halsted was found guilty after trial.

DATED: Honolulu, Hawai'i, March 2, 2005.

On the briefs:

Ryan Yeh,
Deputy Prosecuting Attorney
for Plaintiff-Appellee.

Chief Judge

Taryn R. Tomasa,
Deputy Public Defender
for Defendant-Appellant.

Associate Judge

Associate Judge