

NOT FOR PUBLICATION

NO. 27324

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ALEXA NITA RUSSELL, Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
NORTH KOHALA DIVISION
(Citation No. 2075937MH)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Alexa Nita Russell (Russell) appeals from the Judgment of the District Court of the Third Circuit (the district court),^{1/} entered on April 22, 2005 and amended on July 12, 2005, holding that she violated Hawaii Revised Statutes § 291-11.6(a)(2) (Supp. 2005), the seat belt statute, by being a passenger in the front seat of a motor vehicle being operated on a public highway without being restrained by a seat belt assembly.

At trial, Russell insisted that when she was cited, she was wearing a seat belt with the shoulder harness under her right arm. In entering judgment for Plaintiff-Appellee State of Hawai'i, the district court stated:

The Court interprets the statute to require that a passenger in a motor vehicle wear a seat belt in the fashion that it's designed to be worn. I think it makes only common sense that a seat belt assembly be worn properly in order for the purpose of the law, which is the safety of the passenger in the vehicle, so that they can be protected.

^{1/}The Honorable Joseph P. Florendo, Jr. presided.

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And I think it would be common sense to note that if the shoulder harness was not worn in the way that it was designed to be worn, it does not provide the protection that the designers have in mind.

On appeal, Russell argues that the seat belt statute does not state the manner in which a person must wear a seat belt and therefore, she was in compliance with the seat belt statute on the day in question.

In light of State v. Ribbel, slip op. (Hawai'i App. No. 27324, June 6, 2006), we agree with Russell. Accordingly, we reverse the Judgment of the district court, as amended, and remand this case to the district court, with instructions that it dismiss the charge against Russell and refund any fines, fees, and costs that she may have paid.

DATED: Honolulu, Hawai'i, June 7, 2006.

On the briefs:

Alexa Nita Russell,
defendant-appellant, *pro se*.

Janet R. Garcia,
deputy prosecuting attorney,
County of Hawai'i,
for plaintiff-appellee.

Corinne K. A. Watanabe



Alexa Nita Russell