

NO. 27336

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JERRY LEE, Defendant-Appellant

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STATE OF HAWAI'I

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APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Traffic Nos. 004424211; 004424201;
HPD Criminal No. 04424348)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Lim, and Nakamura, JJ.)

Defendant-Appellant Jerry Lee (Lee) appeals from the judgments entered by the District Court of the First Circuit (the district court)¹ on May 4, 2005, convicting and sentencing him for operating a vehicle under the influence of an intoxicant (DUI), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) (Supp. 2004),² and leaving the scene of an

¹ The Honorable William A. Cardwell presided.

² At the time Defendant-Appellant Jerry Lee was arrested, Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2004) provided, in relevant part, as follows:

Operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty[.]

The word "operate" was defined in HRS § 291E-1 (Supp. 2004), in relevant part, as follows:

"Operate" means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway[.]

(continued...)

accident involving damage to vehicle or property (leaving the scene), in violation of HRS § 291C-13 (1993).³

²(...continued)

"Public way, street, road, or highway" was defined as including:

- (1) The entire width, including berm or shoulder, of every road, alley, street, way, right of way, lane, trail, highway, or bridge;
- (2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment or business purposes;
- (3) Any bicycle lane, bicycle path, bicycle route, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1; or
- (4) Any public highway, as defined in section 264-1.

³ HRS § 291C-13 (1993) provides:

Accidents involving damage to vehicle or property.

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. Any person failing to stop or to comply with the requirements of this section under such circumstances shall be fined not more than \$100 or imprisoned not more than ten days for a first conviction; fined not more than \$200 or imprisoned not more than twenty days, or both, for a second conviction within one year of a first conviction; and fined not more than \$500 or imprisoned not more than six months, or both, for a third conviction within one year of a first conviction.

HRS § 291C-14 (1993) states, in relevant part:

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

(continued...)

Lee contends that the district court erred in denying his motions for judgment of acquittal as to the DUI and leaving-the-scene offenses because: (1) there was insufficient evidence to establish that (a) he was under the influence of alcohol in an amount sufficient to impair his normal mental faculties or the ability to care for himself and guard against casualty, and (b) he operated a vehicle on "a public way, street, road, or highway[,]" as that term is defined in HRS § 291E-1 (Supp. 2004); and (2) there was insufficient evidence to establish that he "intentionally, knowingly, or recklessly [left] the scene of an accident" because the testimony indicated he was not aware that he had been involved in an accident.

Based on our review of the record on appeal and the briefs submitted by the parties, and having duly considered the applicable statutes, case law, and rules of evidence, we disagree with Lee. See Hawai'i Rules of Evidence Rule 701; State v. Toyomura, 80 Hawai'i 8, 25, 904 P.2d 893, 910 (1995); State v. Mitchell, 94 Hawai'i 388, 15 P.3d 314 (App. 2000); State v.

³(...continued)

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, 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 injured person[.]

Souza, 72 Haw. 246, 249, 813 P.2d 1384, 1386 (1991); HRS § 702-230 (1993); and Commentary on HRS § 702-230.

Accordingly, we affirm the judgments entered by the District Court of the First Circuit on May 4, 2005, from which Defendant-Appellant Jerry Lee appealed.

DATED: Honolulu, Hawai'i, September 15, 2006.

On the briefs:

Nicole K. Gibby,
deputy public defender,
State of Hawai'i,
for defendant-appellant.

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