

NO. 27486

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
STEVEN BERNARD CROWLEY, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD TRAFFIC NO. 05088687)

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Nakamura and Fujise, JJ.)

Steven Bernard Crowley (Defendant) appeals the August 5, 2005 judgment of the District Court of the First Circuit (district court)¹ that convicted him of driving under the influence of alcohol.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we dispose of Defendant's points of error on appeal as follows:

1. Even assuming, *arguendo*, that the district court erred in admitting the horizontal gaze nystagmus (HGN) test result as substantive evidence of impairment, the error was harmless beyond a reasonable doubt. State v. Mitchell, 94 Hawai'i 388, 398-00, 15 P.3d 314, 324-26 (App. 2000).

2. There was substantial evidence to support Defendant's conviction, State v. Hopkins, 60 Haw. 540, 542, 592 P.2d 810, 812 (1979), even without the HGN evidence. Mitchell,

¹ The Honorable James H. Dannenberg presided.

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94 Hawai'i at 400, 15 P.3d at 326. See also State v. Vliet, 91 Hawai'i 288, 293, 983 P.2d 189, 194 (1999); State v. Nishi, 9 Haw. App. 516, 524-25, 852 P.2d 476, 481 (1993).

Therefore,

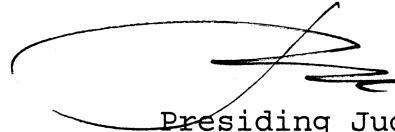
IT IS HEREBY ORDERED that the August 5, 2005 judgment of the district court is affirmed.

DATED: Honolulu, Hawai'i, October 23, 2006.

On the briefs:

Henry P. Ting,
Deputy Public Defender,
for Defendant-Appellant.

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Presiding Judge

Cris M. Nakamura
Associate Judge

Aewa DeW. Fujino
Associate Judge