

NO. 27591

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
SHANE KAHALEHAU, Defendant-Appellant

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APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 05-1-0180(3))

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Shane Kahalehau (Kahalehau) appeals from the Judgment filed on October 11, 2005 in the Family Court of the Second Circuit (family court).^{1/} A jury found Kahalehau guilty of Felony Abuse of Family or Household Member (AFHM), pursuant to Hawaii Revised Statutes (HRS) § 709-906(7) (Supp. 2005), and Criminal Property Damage in the Fourth Degree (CPD4), pursuant to HRS § 708-823(1) (1993). On appeal, Kahalehau raises three points of error:

(1) The family court "reversibly erred in construing HRS § 709-906 to conclude that Mr. Kahalehau had committed a third statutory offense warranting a felony charge." Kahalehau argues that because "he was never sentenced as a second AFHM offender, he could not be sentenced for a third offense under the statute."

^{1/} The Honorable Joseph E. Cardoza presided.

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(2) The family court "reversibly erred in denying jury instruction D3, which would have defined the correct statutory interpretation for second and third AFHM convictions required for enhanced felony punishment." Kahalehau argues that "he had been charged for a third conviction for what only qualified as a second conviction under the law."

(3) The family court "erred when it failed to grant Mr. Kahalehau's [Motion for Judgment of Acquittal] (MJOA) as to Count II, CPD4, by erroneously construing the rules of statutory interpretation to conclude that Mr. Kahalehau was not an 'owner' of the vehicle he allegedly damaged." Kahalehau argues that "[u]nder the plain language and an *in pari materia* reading of HRS § 708-823, [he] qualifies as an owner, which makes it impossible for him to commit the element of the offense to damage 'the property of another.'"

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Kahalehau's points of error as follows:

(1) The family court did not err in sentencing Kahalehau as a felon pursuant to HRS § 709-906(7).

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HRS § 709-906 provides in relevant part:

(5) Abuse of a family or household member . . . [is
a] misdemeanor and the person shall be sentenced as follows:

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense that occurs within one year of the first conviction, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed[.]

(7) For a third or any subsequent offense that occurs within two years of a second or subsequent conviction, the person shall be charged with a class C felony.

On April 26, 1996, Kahalehau was convicted of misdemeanor AFHM. On January 12, 2005, he was convicted again of misdemeanor AFHM. Although the 2005 conviction was Kahalehau's second, it occurred more than a year after the first, and therefore the enhanced sentencing provisions of HRS § 709-906(5)(b) did not apply.

Although Kahalehau argues to the contrary, the statute does not define the terms "first offense" or "second offense"; it speaks only in terms of chronology. HRS § 709-906(5)(a) and (b) refer only to sentencing. Subsection (7) of that statute refers to how "third or subsequent" offenses are to be charged if they occur within two years of a "second or subsequent" conviction. The offense charged in this case occurred on March 5, 2005 -- less than one year "subsequent" to the January 2005 conviction.

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Subsection (7) nowhere contains the words "repeat offender" and contains no requirement that a defendant must have been sentenced on a "second or subsequent" conviction pursuant to the repeat offender language appearing in subsection (5)(b). The sentence imposed for the "second or subsequent" offense is irrelevant as to how the "third or subsequent" offense is charged. There exists no requirement that an accused must have been previously sentenced as a "repeat offender" in order to be charged as a felon.

Kahalehau's assertion that an *in pari materia* examination of subsections (5) and (7) would yield a different result also lacks merit. While it is true that "[l]aws in pari materia, or upon the same subject matter, shall be construed in reference to each other" and "[w]hat is clear in one statute may be called in aid to explain what is doubtful in another," HRS § 1-16 (1993); State v. Kalama, 94 Hawai'i 60, 66, 8 P.3d 1224, 1230 (2000), there exists no ambiguity in any part of HRS § 709-906 requiring this court to engage in such an analysis.

(2) The family court did not err in denying Kahalehau's request for jury instruction D3. Kahalehau's proffered instruction read as follows:

A second conviction is for an offense of abuse of a family or household member which occurs within one year of the first conviction for abuse. An offense of abuse of a

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family or household member is a third offense if it occurs within two years of a second conviction.

As the family court discussed, and this court has already concluded, Kahalehau's interpretation of the AFHM statute is incorrect. As the family court stated:

[HRS §] 709-906(7) addresses or sets forth what felony abuse of a felony household or family member is and makes reference only to its relationship to the date of the second conviction, does not set forth any language requiring the first conviction to occur within a certain period or time, and beyond setting forth what the charge of felony abuse is, it also classifies the offense as a Class C felony.

(3) The family court did not err in concluding that Kahalehau was not a co-owner of the vehicle he was convicted of damaging. HRS § 708-823 (CPD4) provides, in relevant part: "(1) A person commits the offense of [CPD4] if the person intentionally damages the property of another without the other's consent."

HRS § 708-800 (1993) (Definitions of Terms in This Chapter) provides in relevant part:

"Owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

. . . .

"Property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful; however, a security interest is not an interest in property, even if title is in the secured party pursuant to the security agreement.

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Complainant's testimony showed that she was the owner of the vehicle in question and was in possession of the vehicle at the time of the incident. We give effect to the plain and obvious meaning of a statute. State v. Richie, 88 Hawai'i 19, 30, 960 P.2d 1227, 1238 (1998). Kahalehau does not meet the definition of owner as set forth in HRS § 708-800.

Therefore,

The Judgment filed on October 11, 2005 in the Family Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 18, 2007.

On the briefs:

N. Kanale Sadowski,
Deputy Public Defender,
for Defendant-Appellant.

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


Chief Judge


Associate Judge


Associate Judge