

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27954

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DAVID H. BAYLY, Defendant-Appellant

K. HAMAKAHO
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FILED

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
WAILUKU DIVISION
(CASE NO. 2DTA-05-00234)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant David H. Bayly (Bayly) appeals from the Judgment filed in the District Court of the Second Circuit, Wailuku Division, (district court) on March 31, 2006.^{1/} The district court found Bayly guilty of Inattention to Driving, in violation of Hawaii Revised Statutes (HRS) § 291-12 (Supp. 2006).

On appeal, Bayly argues as his sole point of error that "[t]here was insufficient evidence to support the conviction of Inattention to Driving."

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 Bayly's point of error as follows:

(1) Sufficient evidence existed to support Bayly's conviction.^{2/} HRS § 291-12 specifies that the elements of

^{1/} The Honorable Rhonda Loo presided.

^{2/} The district court made the following relevant findings: (1) based on Officer Hada's testimony, Bayly appeared disheveled, displayed indicia of intoxication, and was belligerent, arrogant and cocky; (2) the parking lot was seven to eight feet above a street; (3) the bumper of the truck was hanging over a lower grassy area between the parking lot and the drop to the street; (4) the grassy area was approximately a foot and a half below the parking lot; (5) the bottom frame of the truck was touching the concrete parking lot

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Inattention to Driving are that a person: (1) operated a vehicle, (2) without due care or in a manner as to cause, (3) a collision with, or injury or damage to, as the case may be, any person, vehicle, or other property. The State must show only a negligent state of mind. State v. Reyes, 57 Haw. 533, 534, 560 P.2d 114, 116 (1977). Intent may be proved by direct or circumstantial evidence and the reasonable inferences drawn therefrom. State v. Sadino, 64 Haw. 427, 430, 642 P.2d 534, 536-37 (1982).

As to the first element, Bayly admitted operating the vehicle. As to the second element, sufficient evidence existed proving that Bayly operated his vehicle without due care. Officer Hada testified that the area was adequately lit. Further, while the parties disagreed as to which tire went over the edge of the parking surface, the parties agree that one wheel did in fact go over the edge. Bayly's truck ended up hanging off the edge of the parking lot, immobilized to the point where a tow truck was required to extricate it. Based on the evidence, the district court could have inferred that Bayly was not operating his vehicle with due care. Bayly admitted consuming two beers prior to parking the vehicle. Officer Hada testified that Bayly displayed signs of intoxication and was arrogant and cocky. Dr. Wong testified that Bayly's likely level of impairment at the time of the incident was a blood alcohol content in excess of .08 grams. Evidence of impairment is "germane to a charge of inattention to driving." State v. Mitchell, 94 Hawai'i 388, 401, 15 P.3d 314, 327 (App. 2000).

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surface and the tire was over the edge; (6) the truck's tire was hanging over the edge and if the truck went further it could drop onto the street; (7) the yellow curb bumper was heavy but movable with some force; and (8) the yellow curb bumper did not extend the entire width of the parking stall and a tire could go past the bumper and end up in the grassy area.

While Bayly is correct in his assertion that the mere occurrence of an accident is insufficient to sustain a conviction for Inattention to Driving, here we have the evidence of an accident, evidence of Bayly's intoxication, and the testimonies of Bayly, the arresting officer, and the intoxication expert. Viewed in the light most favorable to the State, this is enough to sustain the conviction. Mitchell, 94 Hawai'i at 401-02, 15 P.3d at 327-28. "We need not determine that the evidence shows negligence as a matter of law but merely that the evidence shows a possibility that negligence could be found as a matter of fact." Id. at 402, 15 P.3d at 328 (quoting State v. Tamanaha, 46 Haw. 245, 258, 377 P.2d 688, 696 (1962)).

As to the third element, the State adduced sufficient evidence of a collision between the bottom of Bayly's truck and the concrete parking lot surface to sustain Bayly's conviction. State v. Williams, 114 Hawai'i 406, 410, 163 P.3d 1143, 1147 (2007) ("the vehicle must nevertheless 'collide' with another object").

Therefore,

The Judgment filed in the District Court of the Second Circuit, Wailuku Division, on March 31, 2006 is affirmed.

DATED: Honolulu, Hawai'i, September 24, 2007.

On the briefs:

Teresa D. Morrison,
Deputy Public Defender,
for Defendant-Appellant.

Gerald K. Enriques,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge