

NO. 28949

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ERIC ALEXANDER HARTMANN, also known as  
ERIC ALEX MCNEIL, Defendant-Appellant

ERIC ALEXANDER  
HARTMANN  
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT  
(Case No. 2DTA-0-01370)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Defendant-Appellant Eric Alexander Hartmann (Hartmann), also known as Eric Alex McNeil, appeals from the Judgment entered on November 28, 2007 in the District Court of the Second Circuit (district court).<sup>1</sup>

Hartmann was convicted of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes (HRS) § 291E-61(a) and (b) (Supp. 2007), and No No-Fault Insurance, in violation of HRS § 431:10C-104 and -117 (2005).

On appeal, Hartmann contends that (1) the district court plainly erred by admitting the testimony of toxicologist, Dr. Clifford Wong; (2) Dr. Wong violated the witness exclusion rule which substantially prejudiced Hartmann's rights; (3) the district court erred by admitting evidence of a urine analysis because the chain of custody was incomplete; (4) the district court plainly erred by admitting evidence of the urine analysis because there was inadequate foundation; (5) there was insufficient evidence to convict Hartmann of Operating a Vehicle Under the Influence of an Intoxicant; and (6) there was insufficient evidence to convict Hartmann of No No-Fault Insurance.

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<sup>1</sup> The Honorable Douglas Ige presided.

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 Hartmann's points of error as follows:

(1) Hartmann claims that the district court plainly erred by admitting the testimony of Dr. Wong because Dr. Wong was not qualified as an expert witness by the court, his testimony was not lay witness testimony from personal observation, and he commented on the ultimate issue "that Hartmann was under the influence of marijuana and methamphetamine in an amount sufficient to impair his ability to safely operate a vehicle." Hartmann specifically contends that Dr. Wong's testimony regarding methamphetamine and marijuana and their effects on the human body was improper.

The appellate court "will apply the plain error standard of review to correct errors which seriously affect the fairness, integrity, or public reputation of judicial proceedings, to serve the ends of justice, and to prevent the denial of fundamental rights." State v. Nichols, 111 Hawai'i 327, 334, 141 P.3d 974, 981 (2006) (quoting State v. Sawyer, 88 Hawai'i 325, 330, 966 P.2d 637, 642 (1998)). We conclude that the admission of Dr. Wong's testimony was not plain error.

Dr. Wong did not lack the qualifications to provide testimony regarding the effects of methamphetamine and marijuana, a subject which was within the scope of his expertise. Hawaii Rules of Evidence (HRE) Rule 702; Terr. of Hawai'i v. Adelmeyer, 45 Haw. 144, 147, 363 P.2d 979, 982 (1961); Larsen v. State Sav. & Loan Ass'n, 64 Haw. 302, 304, 640 P.2d 286, 288 (1982); Commw., Dep't of Transp., Bureau of Driver Licensing v. Moss, 605 A.2d 1279, 1282 (Pa. Commw. Ct. 1992). Moreover, Hartmann's claim that Dr. Wong impermissibly commented on an ultimate issue is without merit. HRE Rule 704; Commentary to HRE Rule 704.

(2) Hartmann failed to object, request a sanction from the district court, or demonstrate to this court that Dr. Wong

violated HRE Rule 615, the witness exclusion rule. While Dr. Wong admitted that he spoke to Officer Mark Hada "outside the courtroom before coming in" "about the police report that I needed to clarify," this court will neither presume that the conversation occurred after Officer Hada testified at trial, in violation of the witness exclusion rule, nor conclude that Dr. Wong could not base his opinion on information received from Officer Hada. See HRE 703 ("The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing.") Moreover, Hartmann's counsel was aware of Dr. Wong's conversation with Officer Hada and had ample opportunity to cross-examine Dr. Wong regarding the conversation. "[D]efendant has the burden of proving that 'there was either prejudice or an abuse of discretion.'" State v. Elmaleh, 7 Haw. App. 488, 494, 782 P.2d 886, 890, (1989).

(3) Hartmann's claim that the district court erred by admitting testimony regarding the urine analysis because the State failed to adduce a sufficient chain of custody is without merit. The State sufficiently established that no tampering took place between the time the sample left Wade Hiraga's possession on Maui and was handled by a "packer" until its receipt on Oahu by Roxanne Ota, a medical technologist with Clinical Laboratories. State v. DeSilva, 64 Haw. 40, 41, 636 P.2d 728, 730 (1981).

(4) Adequate foundation as to the reliability of an instrument known as the Hitachi 917 was laid when Ota testified, "Every day when I go into work, I start up the machine, perform maintenance. Every day there is a maintenance procedure, calibration, and run controls. All of these must pass their specifics before I can being running," and "all that was done prior and throughout the run." Ota also stated that the machine is calibrated using control with known ranges. See State v. Stoa, 112 Hawai'i 260, 265, 145 P.3d 803, 808 (App. 2006).

In any event, the test result obtained from the Hitachi 917 was presumptive for amphetamines and was confirmed by the later test result obtained from the gas chromatography mass spectrometer (GCMS). Although Hartmann argues for the first time on appeal that the witness who conducted the GCMS test failed to establish that she was trained or engaged in the proper manufacturer's procedure, medical technologist Claudia Nissen testified that she had used the GCMS for seven years, cared for and maintained the instrument as part of her duties, performed the daily maintenance checks according to the instructions of the manufacturer and determined that on the day of the test in question, the instrument was working properly. Based on this testimony, we conclude that the admission of the GCMS test results was not plain error. See State v. Wallace, 80 Hawai'i 382, 410, 910 P.2d 695, 723 (1996); State v. Manewa, 115 Hawai'i 343, 354, 167 P.3d 336, 347 (2007).

(5) There was sufficient evidence to support Hartmann's conviction for Operating a Vehicle Under the Influence of an Intoxicant as prohibited by HRS § 291E-61(a).<sup>2</sup> Hartmann's urine analysis results indicated that a concentration of over 71,000 nanograms per milliliter of methamphetamine was present in the sample. Officer Hada stated that Hartmann was going 71 miles per hour in a 45-mile-per-hour zone, he observed Hartmann's vehicle straddling the right side fog line, weaving from one lane to another, and then traveling onto the shoulder over the solid white line and entering the right-turn lane early. The evidence adduced was sufficient to support Hartmann's conviction for operating a vehicle while under the influence of methamphetamine, a drug that impaired his ability to operate his vehicle in a careful and prudent manner.

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<sup>2</sup> HRS § 291E-61(a)(2) states that 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, . . . while under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner."

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(6) Finally, there was sufficient evidence to convict Hartmann of No No-Fault Insurance as prohibited by HRS § 431:10C-104(a) (2005).<sup>3</sup> Officer Hada testified that he asked Hartmann for proof of insurance, but Hartmann failed to provide it. State v. Lee, 90 Hawai'i 130, 135, 976 P.2d 444, 449 (1999).

Therefore,

IT IS HEREBY ORDERED that the Judgment, entered on November 28, 2007 in the District Court of the Second Circuit, is affirmed.

DATED: Honolulu, Hawai'i, February 9, 2009.

On the briefs:

Taryn R. Tomasa,  
Deputy Public Defender,  
for Defendant-Appellant.

Justine Hura,  
Deputy Prosecuting Attorney,  
County of Maui,  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge

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<sup>3</sup> HRS § 431:10C-104(a) provides, "no person shall operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured at all times under a motor vehicle insurance policy."