

NO. 29413

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
TERESA ANN JOSLIN, Defendant-Appellant

2009 JUN 30 AM 8:33
FILED
Dona Kikarano
CLERK, APPELLATE COURTS
STATE OF HAWAII

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
LAHAINA DIVISION
(Case No. 2DTA-08-00876)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Foley, and Fujise, JJ.)

Defendant-Appellant Teresa Ann Joslin (Joslin) appeals from the judgment entered on September 8, 2008 by the District Court of the Second Circuit, Lahaina Division (district court),¹ convicting and sentencing her for inattention to driving in violation of Hawaii Revised Statutes (HRS) § 291-12 (2007).²

Joslin contends that (1) there was insufficient evidence to convict her; and (2) the district court plainly erred by failing to obtain an on-the-record voluntary, knowing, and intelligent waiver from her of her right to testify, as required by Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995).

Based on our review of the record, we conclude that there was substantial evidence adduced at trial to support the district court's determination that Joslin committed the offense of inattention to driving. However, as Plaintiff-Appellee State of Hawai'i concedes, the district court plainly erred by failing to elicit from Joslin an on-the-record waiver of her right to

¹ The Honorable Kelsey T. Kawano presided.

² HRS § 291-12 provides as follows:

Inattention to driving. Whoever operates any vehicle without due care or in a manner as to cause a collision with, or injury or damage to, as the case may be, any person, vehicle or other property shall be fined not more than \$500 or imprisoned not more than thirty days, or both.

In State v. Bayly, 118 Hawai'i 1, 10, 185 P.3d 186, 195 (2008), the Hawai'i Supreme Court held that the state of mind required to establish the elements of the offense of inattention to driving is the default "intentionally, knowingly, or recklessly" set forth in HRS § 702-204 (1993).

testify, as required by Tachibana. See State v. Staley, 91 Hawai'i 275, 287, 982 P.2d 904, 916 (1999).

Therefore, we have no alternative but to vacate the judgment and remand this case for a new trial.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, June 30, 2009.

On the briefs:

Hayden Aluli
for Defendant-Appellant.

Corinne K. A. Watanabe

Renee Ishikawa Delizo,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

Daniel R. Foley

Aunani J. J. J. J.