

*** NOT FOR PUBLICATION ***

NO. 25888

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I,
Plaintiff-Appellee-Petitioner,

vs.

JON KA'APUNI,
Defendant-Appellant-Respondent.

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 MAR 31 PM 1:08

FILED

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CASE NOS. TR 4 & TR 5: 05/13/03,
CITATION NOS. 00155623M & 00145612M)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

On March 14, 2005, the plaintiff-appellee-petitioner State of Hawai'i [hereinafter, "the prosecution"] filed an application for a writ of certiorari (AWC), requesting that this court review the Intermediate Court of Appeal's (ICA's) unpublished memorandum opinion [hereinafter, "the Opinion"], filed on February 11, 2005, affirming in part and reversing in part the November 21, 2003 judgment of the district court of the second circuit, the Honorable Douglas H. Ige presiding, convicting the defendant-appellant-respondent Jon Hans Ka'apuni of and sentencing him for the offenses of (1) driving under the influence of intoxicating liquor [hereinafter, "DUI"], in violation of Hawai'i Revised Statutes (HRS) § 291-4 (Supp. 2000) and (2) inattention to driving (ITD), HRS § 291-12 (Supp. 2001). On March 22, 2005, we granted certiorari.

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The prosecution's sole contention in its application is that

the offense of [ITD] was established without evidence of lack of personal injury or property damage where, in the light most favorable to the [prosecution] where the trial [court] is permitted to draw all reasonable inferences from, and to determine the weight and credibility of, the evidence, sufficient evidence existed of operating the vehicle without due

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold (1) that the ICA's opinion reflects grievous errors of law or fact, see HRS § 602-59(b) (1993), and (2) that there is sufficient evidence to support the district court's conviction Ka'apuni of ITD.

HRS § 291-12 provides that a defendant violates the offense of ITD when the individual "operates a vehicle" in one of three ways: (1) "without due care"; (2) operating a vehicle "in a manner as to cause a collision with . . . any person, vehicle or other property"; and (3) operating a vehicle "in a manner as to cause injury or damage to . . . any person, vehicle or other property[.]" Cf. State v. Momoki, 98 Hawai'i 188, 46 P.3d 1 (App. 2002) (observing that "the element of driving 'without due care' is an alternative one to the element of driving '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'").

In the present matter, as stated by the ICA in its Opinion, the evidence viewed most favorably to the prosecution is as follows:

- (a) the car Kaapuni was driving went off the side of the road at an intersection,
- (b) there was a sound of a crash,
- (c) when facts (a) and (b) above happened, Kaapuni was under

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the influence of alcohol, but (d) the crash did not cause any personal injury or property damage.

It is further noteworthy that, as the ICA stated in its background section, "the officer 'observed [Ka'apuni's] vehicle in the brush area just south of the intersection'" after "the neighbor" heard the sound of the crash.

As the ICA observed, it is clear from the foregoing that Ka'apuni's conduct does not fall within the purview of HRS § 291-12 via the conduct element of operating a vehicle in a manner that "cause[s] injury or damage to . . . any person, vehicle or other property[.]" Nevertheless, viewing the evidence most favorably to the prosecution, there was sufficient evidence for the district court to conclude that Ka'apuni operated his vehicle "without due care" (i.e., by driving his car off the road in such a manner as to cause a loud crash and come to rest in the "brush area"). Moreover, based upon the record, there was sufficient circumstantial evidence from which the district court could fairly conclude that Ka'apuni possessed the requisite state of mind at the time that he drove his car off the road and into the brush area. See State v. Batson, 73 Haw. 236, 254, 831 P.2d 924, 934 (1992) ("Given the difficulty of proving the requisite state of mind by direct evidence in criminal cases, [w]e have consistently held that . . . proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the [defendant's conduct] is sufficient." (Internal quotation signals and citations omitted.)).

Thus, because the evidence, "considered in the strongest light for the prosecution," is "legal[ly] sufficien[t]

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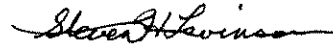
. . . to support [Ka'apuni's] conviction," State v. Viglielmo, 105 Hawai'i 197, 202-03, 95 P.3d 952, 957-58 (2004) (internal quotation signals and citations omitted), we hold that district court did not err in convicting Ka'apuni of ITD. Therefore,

IT IS HEREBY ORDERED that (1) the ICA's Opinion is affirmed with regard to its affirmance of Ka'apuni's conviction of DUI, (2) the ICA's Opinion is reversed as to its reversal of Ka'apuni's conviction of ITD, and (3) the district court's conviction of Ka'apuni of the offense of ITD is affirmed.

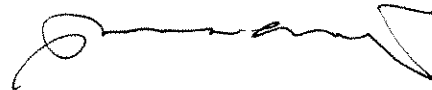
DATED: Honolulu, Hawai'i, March 31, 2005.

On the application

Arleen Y. Watanabe,
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Anna A. Nakayama



James E. Duffy, Jr.