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NO. 25318

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee/Cross-Appellant

vs.

HAROLD JIM, Defendant-Appellant/Cross-Appellee

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 02-1-0004)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant/Cross-Appellee Harold Jim ("Jim") appeals from the judgment of the Circuit Court of the Third Circuit¹ ("circuit court") filed on August 14, 2002. At trial, Jim was found guilty of (1) driving without a license in violation of HRS § 286-102(a) (Supp. 1999),² (2) failure to possess no-fault motor vehicle insurance coverage in violation of HRS § 431:10C-104(a) (Supp. 1997),³ (3) failure to display state-

¹ The Honorable Riki May Amano presided.

² HRS § 286-102(a) (Supp. 1999) (the version of the statute that was in effect at the time the prosecution's complaint was filed) provides that

no person, except one exempted under section 286-105, one who holds an instruction permit under section 286-110, one who holds a commercial driver's license issued under section 286-239, or a commercial driver's license instruction permit issued under section 286-236, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

(Emphasis added.)

³ HRS § 431:10C-104(a) provides in pertinent part:

. . . . 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.

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issued motor vehicle number plates under HRS § 249-7(b) (1993),⁴ and (4) failure to possess and exhibit a motor vehicle certificate of registration under HRS § 286-47(3)(A) (Supp. 1998).⁵

On appeal, Jim argues that:

(1) The circuit court lacked jurisdiction to hear Plaintiff-Appellee State of Hawaii's case (Plaintiff-Appellee is hereafter referred to as "the prosecution"), insofar as the State of Hawai'i (via, inter alia, the prosecution) breached its trustee obligation to Jim, a native Hawaiian and therefore a beneficiary of the Hawaiian Homes Commission Act, by arresting Jim and applying Hawai'i state law against him while Jim was returning to Hawaiian homestead lands;⁶

(2) there was no substantial evidence on the record to establish that Jim was driving without a license in violation of HRS § 286-102(a), inasmuch as there was no substantial evidence

⁴ HRS § 249-7(b) provides in pertinent part:

Upon the issuance of a new series of number plates [t]he owner shall securely fasten the number plates on the vehicle, one on the front and the other on the rear, at a location provided by the manufacturer or in the absence of such a location upon the bumpers of the vehicle and in conformance with section 291-31, in such a manner as to prevent the plates from swinging and at a minimum of twelve inches from the ground. Number plates shall at all times be displayed entirely unobscured and be kept reasonably clean.

⁵ HRS § 286-47(3)(A) provides in pertinent part:

Every owner shall keep the certificate of registration within the vehicle for which it is registered and shall present the same at the request of a police officer, or in the event the vehicle is a motorcycle, shall carry such certificate in a convenient receptacle attached to the vehicle and which shall be presented at the request of a police officer.

⁶ Insofar as Jim does not "specifically" appeal his HRS § 431:10C-104 no no-fault insurance and HRS § 286-47(3)(A) no certificate of registration convictions, their affirmance or reversal therefore hinges on the resolution of the jurisdiction issue, see infra.

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to disprove that Jim failed to qualify under one or more of the HRS § 286-105 (Supp. 1997)⁷ exemptions to the HRS § 286-102(a) statute;

(3) the circuit court's jury instructions as to the HRS § 286-102 driving without a license charge were "prejudicially insufficient and misleading";

(4) the circuit court erred in granting the prosecution's motion to impose a one-year imprisonment sentence upon Jim pursuant to HRS § 286-136(b)⁸ on account of his three prior HRS § 286-102 no driver's license convictions, inasmuch as

⁷ HRS § 286-105 provides in pertinent part:

The following persons are exempt from license:

(1) Any person while driving or operating a motor vehicle in the service or employ of any branch or agency of the federal government; provided that the person has received a license or permit from the branch or agency to operate and drive the motor vehicle;

. . . .

(3) Any person who is at least eighteen years of age and who has in the person's possession a valid driver's license to drive the categories of motor vehicles listed in section 286-102(b), except section 286-102(b)(4), that is equivalent to a driver's license issued in this State but was issued to the person in another state of the United States, the Commonwealth of Puerto Rico, United States Virgin Islands, American Samoa, Guam, a province of the Dominion of Canada, or the Commonwealth of the Northern Mariana Islands for that category of motor vehicle which the person is operating.

. . . .

⁸ HRS § 286-136(b) reads in pertinent part:

Any person who is convicted of violating [HRS §§] 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be subject to a minimum fine of \$500 and a maximum fine of \$1,000, or imprisoned not more than one year, or both, if the person has two or more prior convictions for the same offense in the preceding five-year period.

(Emphases added.)

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the prosecution failed to provide the "competent proof" of such convictions necessary to make Jim "eligible" for enhanced sentencing; and

(5) no substantial evidence existed to support Jim's conviction of failure to display state-issued motor vehicle number plates under HRS § 249-7(b), in that Jim did not have State of Hawai'i license plates on the vehicle he was driving at the time of the traffic stop, such that Jim by definition cannot be properly convicted of this offense.

The prosecution cross-appeals from various adverse evidentiary and jury instruction rulings.

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 as follows:

(1) The State of Hawai'i (in this case, the Hawai'i County Police Department and the circuit court) clearly possessed jurisdiction over Jim. We have made clear that (a) the State of Hawai'i may validly exercise its police powers (*i.e.*, enforce all laws not significantly affecting Hawaiian home lands) upon Hawaiian home lands, and (b) by necessary implication, Hawai'i courts may properly try cases arising from the State's enforcement of such laws. Keпо'о v. Watson, 87 Hawai'i 91, 99, 952 P.2d 379, 387 (1998) ("under [State v. Jim, 80 Hawai'i 168, 171-72, 907 P.2d 754, 757-58 (1995)], police power regulations apply to Hawaiian home lands, and executive officials may enforce them, as long as these regulations do not significantly affect the land[]"); see also Keпо'о v. Kane, 106 Hawai'i 270, 291, 103 P.3d 939, 960 (2005) (quoting with approval Keпо'о v. Watson analysis of Jim). A fortiori, Jim candidly admits that he was not on Hawaiian home lands at the time of his traffic stop and arrest; therefore, Jim's argument must fail. Thus, insofar as

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Jim only appeals his HRS § 431:10C-104 no no-fault insurance coverage and HRS § 286-47(3)(A) no certificate of registration convictions on the basis of jurisdiction, these convictions are affirmed.

(2) The prosecution failed to adduce substantial evidence to support Jim's conviction under HRS § 286-102. Initially, we note that the prosecution bore the burden of disproving, prima facie, that Jim was exempted from licensure under HRS § 286-105, as evidenced by the prosecution's own jury instructions. See also State v. Matautia, 81 Hawai'i 76, 83, 912 P.2d 573, 580 (App. 1996) (listing failure to meet the HRS § 286-102 statutory exceptions as an element of HRS § 286-102 offense). After a sedulous review, though we readily find a wealth of evidence showing that Jim did not possess a valid Hawai'i driver's license, we cannot find even a scintilla of evidence to affirmatively disprove that Jim was exempted from licensure under HRS § 286-105. As the prosecution failed to prove an essential element of the HRS § 286-102 offense, Jim's HRS § 286-102 conviction is reversed.

Because Jim's HRS § 286-102 conviction and sentence must be reversed on this basis, we do not reach Jim's remaining points of error as to prejudicially insufficient and/or misleading jury instructions as to HRS § 286-102 and improperly enhanced sentencing under HRS § 286-136(b).

(3) Jim's contention that HRS § 249-7 cannot be used to charge him with failure to display state license number plates is meritless. Under HRS § 249-2 (1993), all motor vehicles (including Jim's "self-propelled" truck, see HRS § 249-1 (Supp. 1996)) are subject to an annual weight tax which must be paid by April 1 each year. "Upon receipt of the tax the director of finance . . . shall furnish the owner, upon the original

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registration of the vehicle, two number plates for the vehicle." HRS § 249-7(a) (emphasis added). Thereafter, "[t]he owner shall securely fasten the number plates on the vehicle, one on the front and the other on the rear, at a location provided by the manufacturer or . . . in such a manner as to prevent the plates from swinging and at a minimum of twelve inches from the ground." HRS § 249-7(b). Thus, the number plates statute makes plain that state license number plates must be properly attached to the vehicle at all times.

Jim's argument that "did not have state-issued plates so it would have been impossible for him to improperly display plates that he never possessed" is clearly flawed. Number plates are issued to all originally registered cars, see HRS § 249-7(a), and Jim does not assert that his truck was unregistered or stolen. Even assuming arguendo that HRS § 249-7 was somehow ambiguous, under Jim's interpretation of the statute, all automobile owners could effectively subvert their duty to pay the annual weight tax simply by removing their license plates. This is an absurdity which we must reject. "[T]he legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality." Zanakis-Pico v. Cutter Dodge, Inc., 98 Hawai'i 309, 316, 47 P.3d 1222, 1229 (citation omitted); see also HRS § 1-15(3) (1993) ("Where the words of a law are ambiguous . . . [e]very construction which leads to an absurdity shall be rejected.").

When considering the evidence in the strongest light for the prosecution, Jim's repeated admissions that he did not possess state license number plates for his truck constituted credible evidence of sufficient quality and probative value to enable a person of reasonable caution to find that Jim failed to

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display license number plates under HRS § 249-7. See State v. Maldonado, 108 Hawai'i 436, 442, 121 P.3d 901, 907 (2005). Thus, Jim's HRS § 249-7 conviction is affirmed.

(4) The prosecution's cross-appeal is moot. We first note that the cross-appeal is plainly moot to the extent that we affirm Jim's convictions. State v. Okuda, 71 Haw. 434, 456, 795 P.2d 1, 13 (1990) (noting that because all of the defendant's convictions were affirmed, and that "[n]othing is being remanded for retrial", the prosecution's cross-appeal is moot). The only difference between the situation in Okuda and that of the present case is that one of Jim's convictions is reversed. The sole question possibly remaining, then, is whether there is a live case or controversy arising from a reversal of Jim's HRS § 286-102 conviction. The answer is clearly no.

Briefly, the prosecution relevantly argues on cross-appeal that the circuit court abused its discretion in denying evidence of Jim's prior driving-related convictions, first in an order denying the proposed introduction of such evidence, and subsequently in an oral order striking said exhibits without prejudice when the prosecution listed such convictions "for notice" to Jim in case he "opened the door" during trial. The circuit court specifically stated that despite its order to strike the exhibits, in the event Jim did assert a mistake of law "or something to that effect, then I think that the prior convictions would be relevant at that point." (Emphasis added.) Yet, the prosecution admits on cross-appeal that ". . . such exhibits were not moved into evidence." (Emphasis added.) Clearly, the prosecution's arguments are moot inasmuch as the prosecution never actually proffered the exhibits at trial, but merely meant for their listing on the exhibit list to serve as "fair notice" and a warning to Jim. Accordingly, as the

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prosecution's remaining points of error on cross-appeal are moot, the entire cross-appeal is moot, there being no real controversy left to decide. AIG Hawai'i Insurance Co., Inc. v. Bateman, 82 Hawai'i 453, 458-459, 923 P.2d 395, 400-401 (1996). Therefore,

IT IS HEREBY ORDERED that (1) Jim's HRS § 431:10C-104, HRS § 286-47(3)(A), and HRS § 249-7 convictions are affirmed, (2) Jim's HRS § 286-102 conviction and sentence are reversed, and (3) the prosecution's cross-appeal is dismissed.

DATED: Honolulu, Hawai'i, June 14, 2006.

On the briefs:

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