

*** NOT FOR PUBLICATION ***

NO. 26070

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

LANCE KEALOHA, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-0767)

CLERK OF SUPREME COURT
STATE OF HAWAII

2006 JAN 25 AM 9:55

FILED

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Lance Kealoha (Kealoha) appeals from the August 6, 2003 judgment of the circuit court of the first circuit, the Honorable Wilfred Watanabe presiding, convicting Kealoha of unauthorized control of a propelled vehicle (UCPV) in violation of Hawai'i Revised Statutes (HRS) § 708-836 (2001)¹ and sentencing him to a term of five years' imprisonment

¹HRS § 708-836 Unauthorized control of propelled vehicle provides:

(1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent.

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It is an affirmative defense to a prosecution under this section that the defendant:

(a) Received authorization to use the vehicle from an agent of the owner where the agent had actual or apparent authority to authorize such use; or

(b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

(4) For the purposes of this section, "owner" means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the vehicle pending transfer of ownership, "owner" means the legal owner.

(continued...)

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with credit for time served. Kealoha argues as a point of error on appeal that the circuit court erred in precluding Kealoha from asserting the mistake of fact defense at trial in violation of his due process guarantee of a fair trial under the fourteenth amendment to the United States Constitution and article 1, section 14 of the Hawai'i Constitution. Specifically, Kealoha argues that the court erred in granting the prosecution's motion in limine to preclude the presentation or elicitation of any evidence pertaining to the defendant's ignorance or mistake of fact, good faith belief, or conditional intent with respect to his use of the vehicle in question. The prosecution argues that the court did not err, as such evidence would have been irrelevant.

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 vacate the judgment and sentence of the circuit court and remand the matter for a new trial. To the extent that the precluded evidence would tend to negative Kealoha's state of mind with respect to an element of the offense charged, it was error for the trial court to grant the state's motion in limine and, pursuant to that ruling, to exclude evidence pertinent to Kealoha's proposed mistake-of-fact defense. This error implicates the defendant's due process guarantee of a fair trial. The prosecution presents no argument in connection with its burden in the face of trial

¹(...continued)

(5) Unauthorized control of a propelled vehicle is a class C felony.

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error of constitutional dimensions, i.e., to rebut the presumption that such error was not harmless. Therefore,

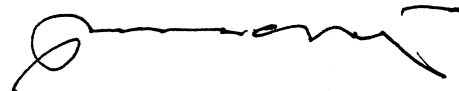
IT IS HEREBY ORDERED that the judgment from which the appeal is taken is vacated and the matter is remanded for a new trial.

DATED: Honolulu, Hawai'i, January 25, 2006.

On the briefs:

Joyce K. Matsumori-Hoshijo,
Deputy Public Defender,
for the defendant-appellant
Lance Kealoha

Ryan Yeh, Deputy Prosecuting
Attorney, for the plaintiff-
appellee State of Hawai'i



Ryan E. Duffly, Jr.