

NO. 29926

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
ADAM I. IKEDA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Case No. 1DTC-09-047483)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Fujise, J.;
and Reifurth, J., dissenting.)

Defendant-Appellant Adam I. Ikeda ("Ikeda") appeals from the Order and Notice of Entry of Order ("Judgment"), filed on June 5, 2009, in the District Court of the First Circuit ("District Court").¹ Ikeda was found guilty of Operating a Vehicle after License and Privilege have been Suspended or Revoked for Operating a Vehicle under the Influence of an Intoxicant ("OVLPSR-OVUII"), in violation of Hawaii Revised Statutes (HRS) § 291E-62 (2007).

On appeal, Ikeda contends that the District Court erred by: (1) admitting into evidence a letter dated June 5, 2009 from the City and County of Honolulu, Division of Motor Vehicle, Licensing and Permits ("Exhibit 1"); (2) admitting into evidence

¹ The Honorable William Cardwell presided.

a certified copy of his traffic abstract ("Abstract"); (3) admitting into evidence a copy of a Notice of Administrative Revocation dated February 18, 2008 ("Notice"); and (4) finding him guilty because there was insufficient evidence to show that he acted with a reckless state of mind.

I.

We resolve Ikeda's points of error as follows:

A.

Plaintiff-Appellee State of Hawai'i ("State") concedes that Exhibit 1 was not properly admitted into evidence pursuant to Hawaii Rules of Evidence (HRE) Rule 902(4) (Supp. 2010). We agree that Exhibit 1 was improperly admitted. However, we conclude that the admission of Exhibit 1 was harmless because it was merely cumulative of other properly admitted evidence.

B.

The District Court did not err in admitting Ikeda's Abstract into evidence.² The Abstract was properly admitted as a certified copy of a public record. HRE Rule 902(4); see HRS § 287-3 (2007). Contrary to the suggestion of Ikeda's counsel, who asserts that she "was unable to discern any seal in the scanned exhibit," the Abstract was properly certified as required by HRE Rule 902(4).

C.

The District Court did not err by admitting the Notice into evidence. Ikeda's claim that the Notice was inadmissible because it was not relevant is without merit. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." HRE Rule 401 (1993).

The Notice was relevant to showing that Ikeda acted

² In admitting the Abstract, the District Court stated that it would only consider the evidence from the Abstract "that is relevant to this case."

recklessly on March 6, 2009, when he drove his vehicle after his driver's license had been revoked for Operating a Vehicle under the Influence of an Intoxicant ("OVUII"). The Notice provided evidence that after Ikeda's OVUII arrest on February 18, 2008, Ikeda had surrendered his driver's license; he knew that he had a temporary license to drive that was only valid for thirty days; he knew that proceedings to revoke his driver's license for OVUII had been initiated before the Administrative Driver's License Revocation Office ("ADLRO"); and he knew that if the ADLRO revoked his license, his temporary privilege to drive would terminate in thirty days on March 19, 2008.

D.

1.

There was sufficient evidence to support the District Court's finding that Ikeda acted recklessly in driving his vehicle on March 6, 2009, while his license was revoked for OVUII.

In finding Ikeda guilty, the District Court explained:

THE COURT: . . . The state of mind that's required here is recklessness. The evidence is quite clear on February 18, 2008 you were arrested for [driving under the influence].

THE DEFENDANT: Correct.

THE COURT: And the officer read to you the administrative driver's license revocation form, and that form indicates that you had a temporary permit for 30 days and that the revocation would take place after that 30 days. You therefore knew that after the 30 days expired that if the driver's license revocation office revoked your license, you would not have a license at all. You knew that you did not have a license at the time you drove. You therefore acted recklessly with respect to whether your license was revoked by the driver's license revocation office at the time you were operating a vehicle.

There's no evidence that you had actual knowledge that your license was revoked at that time. I suspect you had such knowledge, but there is no evidence of that. But certainly there's evidence that you acted recklessly with respect to that. And therefore I find you guilty of that offense.

2.

In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution. State v. Tamura, 63 Haw. 636, 637, 633 P.2d 1115, 1117 (1981). "The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact." State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998) (block quote format and citation omitted).

3.

The State presented the following evidence at trial. Ikeda was arrested on February 18, 2008, for OVUII. As the result of his OVUII arrest, Ikeda was required to surrender his driver's license to the arresting officer. On February 18, 2008, Ikeda was issued the Notice, which advised him that "[i]f the [ADLRO] administratively revokes [his] license and privileges," his license and privilege to operate a vehicle in the State of Hawai'i would terminate thirty days after the Notice was issued. The Notice also advised Ikeda that the Notice served as a temporary permit that allowed him to operate a vehicle for thirty days.

As established by Ikeda's Abstract, the ADLRO administratively revoked Ikeda's driver's license for a period of one year, from March 20, 2008, to March 19, 2009. In addition, Ikeda was charged on February 19, 2008, with OVUII based on his February 18, 2008, arrest, and Ikeda participated in numerous proceedings in that case which eventually culminated in his plea of no contest on March 16, 2009. Ikeda's Abstract further showed that previously in March 2006, the ADLRO had administratively revoked Ikeda's driver's license after an arrest for OVUII and that in August 2006, Ikeda had been convicted of driving without a valid driver's license.³

³ Ikeda's 2006 conviction for driving without a valid driver's license had been pursuant to HRS § 286-102 (2007), and

On March 6, 2009, Ikeda was driving a vehicle and was stopped by the police for disregarding a stop sign. When asked to produce his driver's license and other paperwork, Ikeda told the officer that he "did not have his driver's license."

4.

HRS § 286-116 (2007) requires that when operating a motor vehicle, "[e]very licensee shall have a valid driver's license in the licensee's immediate possession at all times . . . and shall display the same upon demand of a police officer." In light of Ikeda's prior administrative license revocation by the ADLRO in 2006, he was subject to a minimum one-year license revocation for his February 18, 2008, OVUII arrest. See HRS § 291E-41(b)(3) (2007).

5.

When viewed in the light most favorable to the State, there was sufficient evidence to support Ikeda's conviction. When he was stopped by the police on March 6, 2009, Ikeda knew he did not have a valid driver's license in his possession. Ikeda had surrendered his license to the police after his OVUII arrest on February 18, 2008, and his temporary permit expired on March 19, 2008. Ikeda knew that as the result of his February 18, 2008, OVUII arrest, the matter of his license revocation had been submitted to the ADLRO and that a revocation by the ADLRO would terminate his license and privilege to drive. The ADLRO, in fact, had revoked Ikeda's license for one year, and Ikeda's license remained revoked when he drove on March 6, 2009. Ikeda also knew that the State was pursuing the OVUII charge arising out of his February 18, 2008, arrest and that the charge had not been dismissed. The evidence further shows that Ikeda had prior experience with respect to administrative license revocation and driving without a valid license, as his license had previously been administratively revoked and he had a prior conviction for driving without a valid license.

not HRS § 291E-62.

Under the circumstances of this case, Ikeda had a duty to inquire about the status of his license before driving his vehicle. We conclude that there was sufficient evidence that when Ikeda chose to drive his vehicle on March 6, 2009, without a valid license in his possession, he acted recklessly in that he "consciously disregard[ed] a substantial and unjustifiable risk" that his driver's license, at that time, was revoked for OVUII. See HRS § 702-206(3)(b) (1993) (defining the term "recklessly").

II.

The June 5, 2009, Judgment of the District Court is affirmed.

DATED: Honolulu, Hawai'i, March 16, 2011.

On the briefs:

Phyllis J. Hironaka
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for Defendant-Appellant

Chief Judge

Donn Fudo
Deputy Prosecuting Attorney
City and County of Honolulu

Associate Judge