

NO. CAAP-12-0001000

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
TIMOTHY W. BIELER, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT  
KONA DIVISION  
(CASE NO. 3DTA-12-01474)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant Timothy W. Bieler (Bieler) appeals from the Judgment and Notice of Entry of Judgment, entered on September 11, 2012, in the District Court of the Third Circuit, North and South Kona Division (District Court).<sup>1</sup> After a bench trial, the District Court found Bieler guilty of one count of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) (Supp. 2014).<sup>2</sup>

On appeal, Bieler argues that the District Court (1) plainly erred in admitting into evidence, without a sufficient foundation, Officer Aaron Tanaka's (Officer Tanaka) testimony

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<sup>1</sup> The Honorable Joseph P. Florendo presided.

<sup>2</sup> HRS § 291E-61(a)(1) provides:

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

(1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty[.]

regarding the result of Bieler's Horizontal Gaze Nystagmus (HGN) test; and, as a result, wrongly (2) admitted into evidence Officer Tanaka's opinion testimony that Bieler was under the influence of alcohol because it was based in part on the HGN test results; and (3) relied on the HGN test results as substantive evidence of Bieler's impairment.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Bieler's points of error as follows.

Bieler waived his argument that the District Court erroneously admitted Officer Tanaka's testimony regarding the HGN test results when Bieler failed to object to the testimony, at trial. See State v. Wallace, 80 Hawai'i 382, 410, 910 P.2d 695, 723 (1996); see also State v. Metcalfe, 129 Hawai'i 206, 224-25, 297 P.3d 1062, 1080-81 (2013) ("objections to the admissions of incompetent evidence, which a party failed to raise at trial, are generally not subject to plain error review"); State v. Naeole, 62 Haw. 563, 570-71, 617 P.2d 820, 826 (1980); State v. Gonsales, 125 Hawai'i 244, 257 P.3d 1221, No. 30066, 2011 WL 661917 at \*3 (App. Feb. 24, 2011) (SDO); State v. Heffelfinger, 126 Hawai'i 473, 272 P.3d 1240, CAAP-11-0000063, 2012 WL 603967 at \*1 (App. Feb. 24, 2012) (SDO). We need not address Bieler's remaining arguments, which are premised on his assertion that the HGN test results were erroneously admitted.

Therefore, IT IS HEREBY ORDERED that Judgment and Notice of Entry of Judgment, entered on September 11, 2012, in the District Court of the Third Circuit, Kona Division, is affirmed

DATED: Honolulu, Hawai'i, June 30, 2015.

On the briefs:

Phyllis J. Hironaka,  
Deputy Public Defender,  
for Defendant-Appellant.

Presiding Judge

Linda L. Walton,  
Deputy Prosecuting Attorney,  
County of Hawai'i,  
for Plaintiff-Appellee.

Associate Judge

Associate Judge