NO. CAAP-15-0000441

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
BRENT HITOSHI KOZAI KOKI, also known as
BRENT H. KOKI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-15-00039)

SUMMARY DISPOSITION ORDER
(By: Fujise, Presiding Judge, and Reifurth and Ginoza, JJ.)

Defendant-Appellant Brent Hitoshi Kozai Koki, also known as Brent H. Koki, appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment entered on June 2, 2015, in the District Court of the First Circuit, Honolulu Division ("District Court").[1] The District Court convicted Koki of one count of Operating a Vehicle Under the Influence of an Intoxicant ("OVUII"), in violation of Hawaii Revised Statutes ("HRS") § 291E-61(a)(1) and/or (3).[2]

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[1] The Honorable David W. Lo presided.

[2] HRS § 291E-61(a)(1) and (3) (Supp. 2014) provide:

> (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; [or]
>
> . . . .
>
> (3) With .08 or more grams of alcohol per two hundred ten liters of breath[.]

On appeal, Koki argues that the District Court erroneously (1) denied his motion to dismiss the complaint on the ground that the complaint was defective because it pled the charge in the disjunctive; (2) denied his motion to dismiss the HRS § 291E-61(a)(3) OVUII charge because it was pled using defective punctuation; and (3) admitted into evidence his Intoxilyzer test result without a proper foundation.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments they advance and the issues they raise, we resolve Koki's points of error as follows, and affirm.

(1) The District Court did not err in denying Koki's motion to dismiss the Complaint, which was not defective for pleading the charge in the disjunctive. *See State v. Codiamat*, 113 Hawai‘i 220, 227, 317 P.3d 664, 671 (2013); *State v. Vaimili*, 135 Hawai‘i 492, 500, 353 P.3d 1034, 1042 (2015).

(2) The District Court did not err in denying Koki's motion to dismiss the charge of OVUII under HRS § 291E-61(a)(3). Koki cites to no legal authority to support his argument that the use of the semi-colon in the portion of the complaint charging (a)(3) is incorrect, and we find none. Regardless, the wording of the charge is sufficiently clear to provide a person of common understanding with adequate notice of the charge, and its use of the semi-colon tracks the punctuation in § 291E-61(a). *State v. Wheeler*, 121 Hawai‘i 383, 393, 219 P.3d 1170, 1180 (2009). Koki did not argue below his point that the alleged mis-use of the semi-colon resulted in the omission of the "timeliness" element of the offense under HRS § 701-114(1)(e), and the point is waived. Haw. R. App. P. 28(b)(4).

(3) The District Court did not abuse its discretion by admitting into evidence the results of Koki's Intoxilyzer test because the State laid a sufficient foundation for the evidence. *See State v. Hsu*, No. CAAP–10–0000214, 2013 WL 1919514, *1 (Hawai‘i App. May 9, 2013), *cert. denied,* No. SCWC-10-0000214, 2013 WL 4459000 (Hawai‘i Aug. 20, 2013). The court took judicial notice that the Intoxilyzer 8000 was approved by the Department of Health as an accepted accuracy verification device. *State v.*

West, No. CAAP-12-0000717, 2015 WL 3422156, *1, 3-4 (Hawai‘i App. May 27, 2015). The Sworn Statement of Intoxilyzer 8000 Operator by Honolulu Police Department Officer Sandro Fleming states, "I administered a breath test to the person arrested, as named above, in compliance with operator training and Title II, Chapter 114, Hawaii Administrative Rules, and followed the procedures established for conducting the test[.]" Koki was the named person on the form. Compliance with the manufacturer specifications is not required to admit breath alcohol test results. *See Hsu* at *1-2. Furthermore, Officer Fleming testified that he was licensed as an Intoxilyzer 8000 operator when he administered the test to Koki, and to the circumstances surrounding and procedures followed regarding the test administration.

Therefore, IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on June 2, 2015, in the District Court of the First Circuit, Honolulu Division, is affirmed.

DATED: Honolulu, Hawai‘i, April 25, 2016.

On the briefs:

Samuel P. King, Jr.
for Defendant-Appellant.

Presiding Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge