

NO. CAAP-14-0001358

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHEYNE T. TODANI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
'EWA DIVISION
(1DTC-14-028003)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Ginoza, JJ.)

Defendant-Appellant Cheyne T. Todani (Todani) appeals from a Notice of Entry of Judgment and/or Order and Plea/Judgment (Judgment), entered by the District Court of the First Circuit, 'Ewa Division (District court), on October 22, 2014.¹ After a bench trial, the District Court convicted Todani 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(a)(1) and (2) (Supp. 2014),² and

¹ The Honorable Paul B.K. Wong presided.

² HRS § 291E-62(a)(1) and (2) provides:

(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section or to part III or section 291E-61 or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

sentenced him pursuant to HRS § 291E-62(b)(3) (Supp. 2014).³

On appeal, Todani argues that the District Court erred in convicting him (1) after erroneously admitting his traffic abstract (Abstract) into evidence; (2) where Plaintiff-Appellee State of Hawai'i (State) failed to adduce evidence that he had notice of his license revocation; (3) where the evidence was insufficient to show that he was convicted of OVLPSR-OVUII twice within five years before the instant offense; (4) where the State failed to show he was represented by counsel in the proceedings in Cr. Nos. 1DTC-10-010025 and -056244; and (5) after erroneously finding that the choice-of-evils defense was inapplicable.

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 Todani's points of error as follows:

I.

The State adduced sufficient evidence that within five years prior to the instant OVLPSR-OVUII offense, Todani was twice convicted of OVLPSR-OVUII. This evidence included (1) the

²(...continued)

- (1) In violation of any restrictions placed on the person's license;
- (2) While the person's license or privilege to operate a vehicle remains suspended or revoked[.]

³ HRS 291E-62(b)(3) provides, in relevant part:

(b) Any person convicted of violating this section shall be sentenced as follows without possibility of probation or suspension of sentence:

. . . .

- (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section . . . :
 - (A) One year imprisonment;
 - (B) A \$2,000 fine; [and]
 - (C) Permanent revocation of the person's license and privilege to operate a vehicle[.]

June 10, 2010 judgments in Cr. Nos. 1DTC-10-010025 and -056244 respectively, and (2) Todani's Abstract.

The District Court did not err in admitting the Abstract into evidence because it was relevant to show Todani had two prior OVLPSR-OVUIII convictions within five years prior to the instant offense. See HRS § 291E-62(b)(3). Cf. State v. Gomez, 134 Hawai'i 478, 344 P.3d 362, No. CAAP-12-0000642 2015 WL 894866 (App. Feb. 27, 2015) (SDO). These prior convictions made it more likely Todani knew or should have known his license was revoked when he drove on February 24, 2014, and also made it more likely he was a repeat offender.

Construed together, the Judgment in Cr. No. 1DTC-10-056244, citation and Notice of Administrative Revocation (NAR) in this case, and Abstract demonstrate that Todani was the person convicted of OVLPSR-OVUIII in Cr. No. 1DTC-10-056244. See HRS § 706-666(2) (2014). See, e.g., State v. Davis, 133 Hawai'i 102, 122-23, 324 P.3d 912, 932-33 (2014); Gomez, 134 Hawai'i 478, 344 P.3d 362, No. CAAP-12-0000642 2015 WL 894866 at *3. Cf. State v. Nishi, 9 Haw. App. 516, 527, 852 P.2d 476, 482 (1993).

In finding that Todani had two prior convictions for OVLPSR-OVUIII within the five years prior to the instant offense, the District Court erroneously referred to a judgment of conviction in Cr. No. 1DTC-10-089183. However, it is clear the court instead meant to refer to the Judgment in Cr. No. 1DTC-10-056244. The error was harmless. See State v. Reed, 77 Hawai'i 72, 80 n.14, 881 P.2d 1218, 1226 n.14 (1994) overruled on other grounds by State v. Balanza, 93 Hawai'i 279, 1 P.3d 281 (2000).

The District Court did not abuse its discretion in concluding that the Abstract's probative value was not outweighed by the danger of unfair prejudice. See Hawaii Rules of Evidence (HRE) Rule 403 and 404(b). See State v. Lioen, 106 Hawai'i 123, 132-33, 102 P.3d 367, 376-77 (App. 2004).

The Abstract is self-authenticating, under HRE Rule 902, as a signed certification attesting to it being part of official records of the district court appears on the last page. As Todani presents nothing that calls this certification in question, his argument is without merit. See HRE Rule 902; HRS §§ 606-4 (1993) and -8 (1993); Davis, 133 Hawai'i at 120-21, 324 P.3d at 930-31.

II.

The State adduced sufficient evidence that Todani knew or should have known his driver's license was revoked when he drove on February 24, 2014.

As discussed, the State demonstrated that Todani had two prior OVLPSR-OVUIII convictions within five years prior to the instant offense, which made it more likely he had notice that his license was revoked when he drove.

Further, as the District Court found, the Administrative Driver's License Revocation Office's (ADLRO's) September 23, 2013 Notice of Administrative Review Decision (NARD) indicates Todani's license was revoked for a two-year period, which included the date on which he was arrested for OVLPSR-OVUIII here. Todani has not met his burden to rebut the presumption that he received the NARD, which was mailed on September 23, 2013 to his address as reflected on the NAR, which address Officer Thomas Billings (Officer Billings) obtained from Todani's state ID with Todani's assurance that the information was current. See HRS § 291E-37 (Supp. 2015); State v. Martin, 62 Haw. 364, 375, 616 P.2d 193, 200-01 (1980).

Further, the testimony of Officer Billings was sufficient to establish that Officer Billings reviewed the NAR with Todani after his arrest in September 2013. The NAR notified Todani that the ADLRO would automatically conduct an administrative review at which Todani was not entitled to appear and then mail to Todani its decision within eight days after issuance of the NAR. Based on the information in the NARD, NAR, and advisement by Officer Billings, Todani should have known to

check his mail for the NARD before or on September 23, 2013, at any address to which his mail may have been sent.

Last, as the District Court reasonably inferred, Todani and his mother's respective testimonies at trial strongly suggested that Todani knew he was prohibited from driving. See Lioen, 106 Hawai'i at 130, 102 P.3d at 374.

III.

The State established that Todani was represented by counsel at the time of his prior OVLPRS-OVUII convictions in Cr. Nos. 1DTC-10-010025 and -056244. See State v. Pantoja, 89 Hawai'i 492, 498, 974 P.2d 1082, 1088 (App. 1999). The Abstract shows that on February 11, 2010, in Cr. No. 1DTC-10-010025, Todani was referred to the Office of the Public Defender, and on April 15, 2010, he was represented by Deputy Public Defender (DPD) Dawn Nekoba. The Abstract also reflects that on June 10, 2010, DPD Nicole Gibby was present when Todani entered no contest pleas in Cr. Nos. 1DTC-10-010025 and -056244.

IV.

The District Court did not clearly err by finding that the choice-of-evils defense was inapplicable. Viewing the evidence in the light most favorable to the State, there was substantial evidence to support the District Court's conclusion. See HRS § 703-302 (2014). As the court found, Todani obtained control of the vehicle when he took the keys from his mother and could have called 911. Further, there is no evidence showing Todani was prevented from calling a taxi, helping his mother catch a bus, or asking someone besides Fry to drive. See e.g., State v. Poouahi, 130 Hawai'i 348, 310 P.3d 1049, No. 29890, 2010 WL 2513356 at *1 (App. Jun. 23, 2010) (SDO); State v. Friedman, 93 Hawai'i 63, 71-72, 996 P.2d 268, 275-76 (2000).

V.

Therefore, IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea/Judgment, entered by the

District Court of the First Circuit, 'Ewa Division, on
October 22, 2014, is affirmed.

DATED: Honolulu, Hawai'i, June 17, 2016.

On the briefs:

Teri M. Wright,
Deputy Public Defender,
for Defendant-Appellant.

Presiding Judge

Sonja P. McCullen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge