

Electronically Filed
Intermediate Court of Appeals
CAAP-14-0001391
30-JUN-2016
08:07 AM

NOS. CAAP-14-0001391, CAAP-15-0000349,
CAAP-15-0000350, and CAAP-15-0000351

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

CAAP-14-0001391

STATE OF HAWAII, Plaintiff-Appellee, v.
LOUIS L. PALAMA, Defendant-Appellant
(CASE NO. 5DTC-13-000343)

AND

CAAP-15-0000349

STATE OF HAWAII, Plaintiff-Appellee, v.
LOUIS L. PALAMA, Defendant-Appellant
(CASE NO. 5DTC-13-002816)

AND

CAAP-15-0000350

STATE OF HAWAII, Plaintiff-Appellee, v.
LOUIS L. PALAMA, Defendant-Appellant
(CASE NO. 5DTC-14-000971)

AND

CAAP-15-0000351

STATE OF HAWAII, Plaintiff-Appellee, v.
LOUIS L. PALAMA, Defendant-Appellant
(CASE NO. 5DTC-14-001172)

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT

SUMMARY DISPOSITION ORDER

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

In this consolidated appeal, Defendant-Appellant Louis Lance Palama (Palama) appeals from the (1) Judgment/Order and Notice of Entry of Judgment/Order in 5DTC-13-000343 (CAAP-14-

0001391), filed on November 25, 2014, (2) Amended Judgment and Notice of Entry of Amended Judgment in 5DTC-13-002816 (CAAP-15-0000349), filed on April 17, 2015, (3) Judgment/Order and Notice of Entry of Judgment/Order in 5DTC-14-000971 (CAAP-15-0000350), filed on March 19, 2015, and (4) Judgment/Order and Notice of Entry of Judgment/Order in 5DTC-14-001172 (CAAP-15-0000351), entered on March 19, 2015, in the District Court of the Fifth Circuit (District Court).

In 5DTC-13-000343, Palama was convicted of Driving Without a License in violation of Hawaii Revised Statutes (HRS) § 286-102 (Supp. 2013).¹ In 5DTC-13-002816, Palama was convicted of Driving Without a License in violation of HRS § 286-102.² In 5DTC-14-000971, Palama was convicted of Driving Without a License in violation of HRS § 286-102 (Supp. 2014) and No No-Fault Insurance in violation of HRS § 431:10C-104(a) (2005). In 5DTC-14-001172, Palama was convicted of Driving Without a License in violation of HRS § 286-102 (Supp. 2014) and No No-Fault Insurance in violation of HRS § 431:10C-104(a).

On appeal, Palama contends (1) the District Court lacked jurisdiction to hear all four of these cases because Palama is a citizen of the Kingdom of Hawai'i and the Kingdom of Hawai'i still exists, (2) all charges for Driving Without a License failed to state an essential element of the charge, that Palama was driving on a public or private road, (3) the District Court erred by taking judicial notice that the location of the offenses were public roads, (4) in 5DTC-13-000343 he received ineffective assistance of counsel because counsel did not request nominal bail be set so that he could receive pre-sentence credit for time served, (5) in 5DTC-13-000343 his right to due process was violated when he was forced to commence with trial without an attorney, and (6) in 5DTC-13-002816, 5DTC-14-000971, and 5DTC-14-001172 there was insufficient evidence to prove that Palama was

¹ The Honorable Trudy K. Senda presided.

² The Honorable Sara Silverman presided in 5DTC-13-002816, 5DTC-14-000971, and 5DTC-14-001172.

the driver of the vehicle.

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 Palama's points of error as follows:

(1) Palama's claim that the District Court lacked jurisdiction to hear all of the cases because he is a citizen of the Kingdom of Hawai'i is without merit. State v. Kaulia, 128 Hawai'i 479, 486-87, 291 P.3d 377, 384-85 (2013).

(2) Palama's claim that the charges for Driving Without a License in violation of HRS § 286-102 failed to state an essential element of the charge, i.e. driving on a public or private road, is without merit. HRS § 286-102(a), defining the offense of Driving Without a License, states:

No person, except one exempted under section 286-105, one who holds an instruction permit under section 286-110, one who holds a provisional license under section 286-102.6, one who holds a commercial driver's license issued under section 286-239, or one who holds a commercial driver's license instruction permit issued under section 286-236, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

The plain language of HRS § 286-102(a) does not limit the offense of driving without a license to public roads. State v. Kelekolio, 94 Hawai'i 354, 356-61, 14 P.3d 364, 366-71 (App. 2000). The statute prohibits operating a motor vehicle without being appropriately examined and duly licensed. Id. Thus, it prohibits driving without a license within the State of Hawai'i. The charges against Palama for Driving Without a License stated that the offenses were committed within the County of Kaua'i, State of Hawai'i. Therefore, the charges did not omit an essential element of the offense by failing to specify that the offenses occurred on a public or private road.

The complaints charging No No-Fault Insurance were not defective. HRS § 431:10C-104 (emphasis added) states that "no person shall operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such

motor vehicle is insured at all times under a motor vehicle insurance policy." Therefore, the charge would have been defective had it included the term "or private" to modify the type of street, road, or highway, as argued by Palama.

(3) The District Court did not err by taking judicial notice that the locations where Palama operated or used a vehicle was a public street, road, or highway. As stated above, Driving Without a License in violation of HRS § 286-102 does not require proof that the offense occurred on a public road, street, or highway. Thus, Palama's claim that it was improper for the District Court to take judicial notice that the locations where Palama operated a vehicle were public streets, roads, or highways is only applicable to 5DTC-14-000971 and 5DTC-14-001172 in which he was convicted for violating HRS § 431:10C-104(a).

HRS § 431:10C-104 states:

§431:10C-104. Conditions of operation and registration of motor vehicles. (a) Except as provided in section 431:10C-105, no person shall operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured at all times under a motor vehicle insurance policy.

Rule 201(b) of the Hawaii Rules of Evidence states:

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

"The motor vehicle laws were brought within [HRS] Chapter 431 in an effort to consolidate all the insurance laws into one chapter." TIG Ins. Co. v. Kauhane, 101 Hawai'i 311, 325, 67 P.3d 810, 824 (App. 2003). The terms "public," "street," "road," and "highway" are not defined in HRS Chapter 431:10C. Thus, whether a "public street, road, or highway" must be owned by the government or merely open to the public is not specified in the statute. "Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another." Id. at 322, 67 P.3d at 821 (quoting State v. Rauch, 94 Hawai'i 315, 322, 13 P.3d 324, 331 (2000)). Thus,

we may look to HRS Chapter 286 to aid in our interpretation of the meaning of "public street, road, or highway."

Highway means "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." HRS § 286-2 (2007). The State of Hawaii, Department of Transportation lists Kaumualii Highway, from the intersection of Kuhio Highway/Rice Street to Lio Road, as a road under the jurisdiction of the State of Hawaii, Highways Division. <http://hidot.hawaii.gov/highways/home/kauai/kauai-state-roads-and-highways> (last visited June 24, 2016). The highway, from the intersection of Kuhio Highway/Rice Street to Lio Road is the entirety of Kaumualii Highway. "The department of transportation shall acquire, subdivide, consolidate, construct, maintain, and administer all highways comprising the state highway system in accordance with all state and federal laws and exempt from county subdivision ordinances." HRS § 264-43. Therefore, judicial notice that Kaumualii Highway is a public highway was proper.

The terms "public," "street," and "road" are not defined in HRS Chapter 286. This court "may confirm the ordinary meaning of statutory terms by resort [sic] to extrinsic aids, such as dictionaries and our case law." State v. Kalani, 108 Hawai'i 279, 284, 118 P.3d 1222, 1227 (2005) (citation omitted). The term "public" is defined as "[o]pen to common or general use; as, a public road; a public house." Webster's Dictionary, <http://www.webster-dictionary.net/definition/public> (last visited June 22, 2016). A "street" is "a paved way or road; a public highway; now commonly, a thoroughfare in a city or village, bordered by dwellings or business houses." Webster's Dictionary, <http://www.webster-dictionary.net/definition/street> (last visited June 22, 2016). Finally, a "road" is understood to refer to "[a] place where one may ride; an open way or public passage for vehicles, persons, and animals; a track for travel, forming a means of communication between one city, town, or place, and another." Webster's Dictionary, <http://www.webster-dictionary.net/definition/road> (last visited June 22, 2016). Thus, for purposes of HRS § 431:10C-104, a "public street, road, or highway" includes any place open to the general public for

purposes of vehicular traffic. Such a broad interpretation is consistent with the purpose of HRS Chapter 431:10C.³

The fact that Papalina Road and Lele Road are open to the general public for the purpose of vehicular traffic is "generally known within the territorial jurisdiction of the trial court," and, thus, not subject to reasonable dispute. Hawaii Rules of Evidence Rule 201(b)(1). Therefore, judicial notice that Palama was observed operating a vehicle on a "public street, road, or highway," was proper. See State v. Rivera, 128 Hawai'i 311, 288 P.3d 129, 2012 WL 4344185 (App. 2012) (SDO), vacated on other grounds, 131 Hawai'i 300, 318 P.3d 590 (2014) (SDO) (rejecting Rivera's argument that evidence supporting his conviction for Operating a Vehicle Under the Influence of an Intoxicant was insufficient where the trial court took judicial notice Rivera drove on a public way, street, road, or highway).

(4) Palama did not receive ineffective assistance of counsel when his counsel failed to request bail in 5DTC-13-000343 so that he could receive pre-sentence credit for time served. Palama was not incarcerated due to the charges in 5DTC-13-000343. Instead, he was issued a citation and summons. Thus, Palama

³ HRS § 431:10C-102 states:

§431:10C-102 Purpose. (a) The purpose of this article is to:

- (1) Create a system of reparations for accidental harm and loss arising from motor vehicle accidents;
- (2) Compensate these damages without regard to fault; and
- (3) Limit tort liability for these accidents.

(b) To effectuate this system of motor vehicle insurance and to encourage participation by all drivers in the motor vehicle insurance system:

- (1) Those uninsured drivers who try to obtain the privilege of driving a motor vehicle without the concomitant responsibility of an ability to compensate adequately those who are injured as a result of a motor vehicle accident are to be dealt with more severely in the criminal or civil areas than those who obtain the legally required motor vehicle insurance coverage;
- (2) Those persons truly economically unable to afford insurance are provided for under the public assistance provisions of this article.

could not post bail for a charge for which he was not incarcerated. In addition, Palama admits that he was incarcerated due to another, unrelated charge. Thus, Palama could not receive pre-sentence credit for a pending charge while he was incarcerated for another unrelated charge. HRS § 706-671(3) (Supp. 2015); State v. Yamasaki, 91 Hawai'i 163, 166, 981 P.2d 720, 723 (App. 1999) ("[The] purpose of HRS § 706-671(1) is to credit a defendant for the time he or she is confined prior to sentencing in connection with the defendant's ultimate conviction." (citation omitted)).

(5) Palama's right to due process was violated when there was not a proper waiver of his right to an attorney in 5DTC-13-000343.

Although Palama may have waived his right to court-appointed counsel on August 6, 2014, on October 2, 2014, when Palama appeared for trial without counsel, no colloquy regarding or explicit waiver of his right to counsel was conducted or taken before trial. As a valid waiver of Palama's right to counsel was not taken, we must vacate his conviction as to case 5DTC-13-000343. See State v. Akina, 121 Hawai'i 472, 220 P.3d 1053, 2009 WL 4726630 (App. 2009) (SDO).

(6) There was sufficient evidence to prove that Palama was the driver of a vehicle in 5DTC-13-002816, 5DTC-14-000971, and 5DTC-14-001172. When the evidence adduced in the trial court is considered in the strongest light for the prosecution, State v. Matavale, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007), there was substantial evidence that Palama was the driver in each of those cases.

In 5DTC-13-002816, Officer Broad identified Palama in court and testified that on September 8, 2013, at approximately 2:00 p.m., he first observed Palama on Papalina Road as Palama was driving a pickup truck. After he stopped Palama, Palama could not produce a valid Hawai'i State driver's license, motor vehicle insurance, or registration.

In 5DTC-14-000971, Officer Lester identified Palama in court and testified that on March 31, 2014, at approximately 1:04 p.m., he stopped Palama, who was driving a brown Ford pickup truck and could not provide him with a Hawai'i State driver's

license, registration, or proof of insurance.

In 5DTC-14-001172, Officer Melcher identified Palama in court and testified that on April 18, 2014, at approximately 9:20 a.m., he observed Palama driving a brown Ford F-150 on Papalina Road, near Medeiros Farms, and after stopping Palama, Palama could not produce a valid Hawai'i State driver's license or motor vehicle insurance.

In each of these cases, the officer's testimony was substantial evidence that Palama was the driver of the vehicle that was stopped.

Based on the foregoing, IT IS HEREBY ORDERED that the (1) Judgment/Order and Notice of Entry of Judgment/Order in 5DTC-13-000343 (CAAP-14-0001391) entered on November 25, 2014 is vacated and this case is remanded for further proceedings.

IT IS FURTHER ORDERED that the (2) Amended Judgment and Notice of Entry of Amended Judgment in 5DTC-13-002816 (CAAP-15-0000349) filed on April 17, 2015, (3) Judgment/Order and Notice of Entry of Judgment/Order in 5DTC-14-000971 (CAAP-15-0000350), filed on March 19, 2015, and (4) Judgment/Order and Notice of Entry of Judgment/Order in 5DTC-14-001172 (CAAP-15-0000351), entered on March 19, 2015 in the District Court of the Fifth Circuit are affirmed.

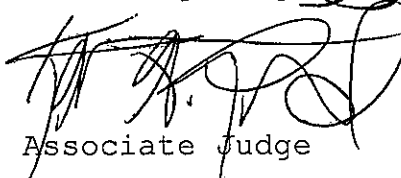
DATED: Honolulu, Hawai'i, June 30, 2016.

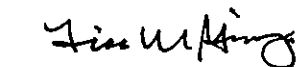
On the briefs:

Kai Lawrence,
for Defendant-Appellant.

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kaua'i,
for Plaintiff-Appellee.


Presiding Judge


Associate Judge


Associate Judge