

NO. CAAP-15-0000013

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
HELEN T. GREEN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(2DTA-13-01380)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Helen T. Green (Green) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment (Judgment) entered on December 10, 2014, in the District Court of the Second Circuit, Wailuku Division (District Court).¹ After a bench trial, the District Court found Green guilty 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) (Supp. 2015).²

On appeal, Green argues that the District Court erred in admitting into evidence her Horizontal Gaze Nystagmus (HGN) test results without a sufficient foundation. She argues in the alternative that the court abused its discretion in admitting the results as substantive evidence.

¹ The Honorable Adrienne N. Heely presided. The Honorable Richard Priest presided over the trial.

² HRS § 291E-61(a)(1) provides, "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 . . . [w]hile 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[.]"

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 Green's points of error as follows.

Even without the HGN test results there was overwhelming, compelling evidence to support Green's conviction. See State v. Kam, 134 Hawai'i 280, 287, 339 P.3d 1081, 1088 (App. 2014), aff'd, 137 Hawai'i 161, 366 P.3d 636, No. SCWC-12-0000897, 2016 WL 770253 (Haw. Feb. 25, 2016) (SDO); State v. Avilla, 127 Hawai'i 3, 274 P.3d 1247, No. 30701, 2012 WL 1177103 at *1 (App. Apr. 9, 2012) (SDO), vacated on other grounds in State v. Avilla, 131 Hawai'i 300, 318 P.3d 590, No. SCWC-30701, 2014 WL 537664, (Haw. Jan. 31, 2014) (SDO). Therefore, any error on the part of the District Court in admitting evidence of the HGN test results was harmless. See Hawai'i Rules of Penal Procedure Rule 52(a); State v. Toyomura, 80 Hawai'i 8, 27, 904 P.2d 893, 912 (1995); State v. Sprattling, 99 Hawai'i 312, 320, 55 P.3d 276, 284 (2002).

Maui Police Department Officer Justin Mauiola (Officer Mauiola) testified that he saw Green's vehicle drift or swerve over the solid white lines and nearly sideswipe a truck in the other northbound lane. The truck jerked to the right to avoid being hit. Green continued to drive for .2 miles after the officer activated his very prominent, blue, "wig-wag" lights and his siren, even though Green passed many areas where she could have pulled over. When Green pulled over, her vehicle quickly jerked across the outer lane, onto the shoulder area, nearly hit a guardrail, and jerked back to the left before making an abrupt stop. Officer Mauiola had to brake "pretty hard" to stop in time.

Officer Mauiola observed that Green's eyes were red, watery, and bloodshot, her speech was slurred and mumbled, and there was an odor of alcohol on her breath. When Officer Mauiola asked Green for her driver's license, she handed him a credit card. As Green made her way from her car to the area where the Standardized Field Sobriety Tests (SFSTs) were to be

conducted, she swayed back and forth and walked very slowly and deliberately, as if to ensure her feet were touching the ground.

Green told Officer Mauiola she had not been injured recently, was not seeing a doctor or taking medication, and had no issues with her head, neck, back, legs, or feet, or anything that would prevent her from walking in a straight line or standing on one foot. She complained of no medical or physical problems. She told the officer she was wearing contact lenses but did not say that they would affect her ability to perform the SFSTs.

As Green stood ready to take the HGN test, she leaned forward. During the instructional phase of the Walk-and-Turn test, Green lost her balance three times and started early three times. During the walking phase of the test, she stepped off-line twice each way; missed heel-to-toe connections on all nine steps going each way; raised her arms in a "T" fashion rather than keeping them down at her sides; and spun around when turning. Officer Mauiola was not able to get past the instructional phase of the One-Leg-Stand test because Green could not stand with her feet together without falling. After she made three failed attempts to stand with her feet together, the officer deemed it unsafe to continue.

Therefore, IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea-Judgment, entered on December 10, 2014, in the District Court of the Second Circuit, Wailuku Division is affirmed.

DATED: Honolulu, Hawai'i, May 31, 2016.

On the briefs:

Reiko A. Bryant,
Deputy Public Defender,
for Defendant-Appellant.

Presiding Judge

Artemio C. Baxa,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

Associate Judge

Associate Judge