

NO. CAAP-18-0000452

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
SHANE TAUPAU, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CPC-17-0000390)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Shane Taupau (**Taupau**) appeals from the May 1, 2018 Judgment of Conviction and Probation Sentence (**Judgment**) entered by the Circuit Court of the First Circuit (**Circuit Court**).¹ After a jury trial, Taupau was convicted of Unauthorized Control of a Propelled Vehicle (**UCPV**) in violation of Hawaii Revised Statutes (**HRS**) § 708-836 (2014).²

¹ The Honorable Christine E. Kuriyama presided.

² HRS § 708-836 provides:

§ 708-836 Unauthorized control of propelled vehicle.

(1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent.

(continued...)

Taupau raises a single point of error on appeal, contending that the Circuit Court plainly erred in failing to instruct the jury on the agent affirmative defense available under HRS § 708-836(3)(a).

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced, the issues raised by the parties, and the relevant statutory and case law, we resolve Taupau's point of error as follows:

"[A] defendant is entitled to an instruction on every defense or theory of defense having any support in the evidence, provided such evidence would support the consideration of that issue by the jury, no matter how weak, inconclusive, or unsatisfactory the evidence may be." State v. Hironaka, 99

²(...continued)

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It is an affirmative defense to a prosecution under this section that the defendant:

(a) Received authorization to use the vehicle from an agent of the owner where the agent had actual or apparent authority to authorize such use; or

(b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

(4) For the purposes of this section, "owner" means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the vehicle pending transfer of ownership, "owner" means the legal owner.

(5) Unauthorized control of a propelled vehicle is a class C felony.

Hawai'i 198, 204, 53 P.3d 806, 812 (2002) (citation and internal quotation marks omitted).

Here, there was no rational basis in the evidence for the Circuit Court to give such an instruction. Taupau did not adduce any evidence that the person he identified as Maka - who he knew was not the owner of the subject vehicle, and who had thrown him the subject vehicle's keys upon his request to borrow it - was the agent of the owner of the subject vehicle. Accordingly, we conclude that the Circuit Court did not plainly err in failing to instruct the jury on the agent affirmative defense available under HRS § 708-836(3)(a). See State v. Palisbo, 93 Hawai'i 344, 355, 3 P.3d 510, 521 (App. 2000); cf. State v. Mainaupo, 117 Hawai'i 235, 248-49, 178 P.3d 1, 14-15 (2008) (distinguishing Palisbo on the facts).

Therefore, the Circuit Court's May 1, 2018 Judgment is affirmed.

DATED: Honolulu, Hawai'i, April 18, 2019.

On the briefs:

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

Presiding Judge

Chad Kumagai,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge