

NO. 23132

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
RICKIE KAAHAINA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,  
WAILUKU DIVISION  
(CASE NOS. TR 13-14 OF 12/22/99;  
CITATION NOS. 0729881MM & 0731620 MM)

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Rickie Kaahaaina (Kaahaaina) was charged by complaints dated July 14, 1999, with Driving While License Suspended or Revoked, in violation of Hawaii Revised Statutes (HRS) § 286-132 (Supp. 2000),<sup>1</sup> and driving without

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<sup>1</sup> **§286-132 Driving while license suspended or revoked.**  
Except as provided in section 291-4.5, no resident or nonresident whose driver's license, right, or privilege to operate a motor vehicle in this State has been canceled, suspended, or revoked may drive any motor vehicle upon the highways of this State while the license, right, or privilege remains canceled, suspended, or revoked.

**§286-136 Penalty.** (a) Except as provided in subsection (b), any person who violates section . . . 286-132 . . . shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both. Any person who violates any other section in this part shall be fined not more than \$1,000.

(b) Any person who is convicted of violating section . . . 286-132 . . . shall be subject to a maximum fine of \$1,000, or imprisoned not more than one year, or both, if the person has two or more prior convictions for the same offense in the preceding five-year period. [Supp. 2000]

No-Fault insurance, in violation HRS § 431:10C-104 (Supp. 2000).<sup>2</sup> At the initial arraignment and plea in the District Court of the Second Circuit, Wailuku Division,<sup>3</sup> (the district court) on August 26, 1999, the prosecutor moved to amend the Driving while License Suspended or Revoked charge to Driving After License Suspended or Revoked for Driving Under the Influence of Intoxicating Liquor, in violation of HRS § 291-4.5

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<sup>2</sup> **§ 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.

(b) Every owner of a motor vehicle used or operated at any time upon any public street, road, or highway of this State shall obtain a motor vehicle insurance policy upon such vehicle which provides the coverage required by this article and shall maintain the motor vehicle insurance policy at all times for the entire motor vehicle registration period.

(c) Any person who violates the provisions of this section shall be subject to the provisions of section 431:10C-117(a).

(d) The provisions of this article shall not apply to any vehicle owned by or registered in the name of any agency of the federal government, or to any antique motor vehicle as defined in section 249-1.

<sup>3</sup> The Honorable Douglas H. Ige presiding.

(1993 & Supp. 2000).<sup>4</sup> The district court granted the motion, referred Kaahaaina to the public defender's office, and continued the arraignment and plea until September 16, 1999. Following a trial on December 22, 1999, the district court found Kaahaaina guilty of both charges. The district court sentenced Kaahaaina as follows: (1) Driving After License Suspended or Revoked for Driving Under the Influence of Intoxicating Liquor -- thirty (30) days in jail, a \$1000.00 fine, an additional year of license suspension, a \$7.00 payment to the Driver's Education Fund, a

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<sup>4</sup> **§291-4.5 Driving after license suspended or revoked for driving under the influence of intoxicating liquor; penalties.**

(a) No person whose driver's license has been revoked, suspended, or otherwise restricted pursuant to chapter 286 or section 291-4 or 291-7 shall operate a motor vehicle upon the highways of this State either while the person's license remains suspended or revoked or in violation of the restrictions placed on the person's license. The period of suspension or revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.

(b) Any person convicted of violating this section shall be sentenced as follows:

- (1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section:
  - (A) A term of imprisonment at least three consecutive days but not more than thirty days;
  - (B) A fine not less than \$250 but not more than \$1,000; and
  - (C) License suspension or revocation for an additional year;
- (2) For an offense which occurs within five years of a prior conviction under this section:
  - (A) Thirty days imprisonment;
  - (B) A fine of \$1,000; and
  - (C) License suspension or revocation for an additional two years; and
- (3) For an offense that occurs within five years of two or more prior convictions under this section:
  - (A) One year imprisonment;
  - (B) A \$2,000 fine; and
  - (C) Permanent revocation of the person's license.

\$20.00 administrative fee, and a \$25.00 Criminal Injuries Compensation Fund fee; and (2) Driving without No-Fault insurance -- a \$500.00 fine, a \$7.00 payment to the Driver's Education Fund, and a \$20.00 administrative fee.

Kaahaaina appeals the December 22, 1999, Judgment of the district court. On appeal, Kaahaaina contends that the district court erred because (1) it lacked jurisdiction since he was never formally charged with a crime; (2) it convicted him for operating a vehicle while his license was revoked where there was insufficient evidence that he had received notice of the Administrative Revocation decision; (3) it convicted him of driving after his license was suspended or revoked where there was insufficient evidence elicited at trial that Kaahaaina intentionally, knowingly, or recklessly operated a vehicle while his license was suspended or revoked; and (4) it ordered that he pay \$1500.00 in fines without first inquiring into his ability to pay the fines imposed. The State concedes that Kaahaaina was not properly charged, and therefore the December 22, 1999, Judgment of the district court must be vacated.

The district court erred by convicting Kaahaaina of violating HRS § 291-4.5 because Kaahaaina was never formally charged orally or by written complaint. See State v. Knoeppel, 71 Haw. 168, 785 P.2d 1321 (1990). At Kaahaaina's arraignment

and plea on September 16, 1999, the deputy public defender stated:

Deputy Public Defender . . . on behalf of Rickie Kaahaaina, who is present, your Honor.

At this time we will waive public reading of the charge, enter pleas of not guilty, and ask that the matter be set for trial.

The State failed to properly initiate the criminal proceedings against Kaahaaina and thus failed to initiate jurisdiction in the district court. Hawaii Rules of Penal Procedure (HRPP) Rule 5(b)(1) provides:

**Rule 5. PROCEEDINGS BEFORE THE DISTRICT COURT**

. . . .

**(b) Offenses Other Than Felony.**

(1) Arrestment. In the district court, if the offense charged against the defendant is other than a felony, the complaint shall be filed or the oral charge stated, a copy of such charge and any affidavits in support thereof and a copy of the appropriate order, if any, shall be furnished the defendant, and proceedings shall be had in accordance with this section (b). Arrestment shall be in open court and shall consist of the reading of the complaint or the statement of the oral charge to the defendant, or stating the substance of the charge and calling on the defendant to plead thereto. In addition to the requirements of Rule 10.1, the court shall in appropriate cases inform the defendant of the right to jury trial in the circuit court or that the defendant may elect to be tried without a jury in the district court. [Emphasis added.]

The State concedes Kaahaaina was improperly charged in this case because the "Complaint and Summons" forms used by

Officer Bugado failed to comply with HRS § 805-1 (Supp. 2000)<sup>5</sup> and HRPP Rule 7(d)<sup>6</sup>.

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<sup>5</sup> **§805-1 Complaint; form of warrant.** When a complaint is made to any prosecuting officer of the commission of any offense, the prosecuting officer shall examine the complainant, shall reduce the substance of the complaint to writing, and shall cause the same to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer. If the original complaint results from the issuance of a traffic summons or a citation in lieu of an arrest pursuant to section 803-6, by a police officer, the oath may be administered by any police officer whose name has been submitted to the prosecuting officer and who has been designated by the chief of police to administer the oath. Upon presentation of the written complaint to the judge within whose circuit the offense is alleged to have been committed, the judge shall issue a warrant, reciting the complaint and requiring the sheriff, or other officer to whom it is directed (except as provided in section 805-3), forthwith to arrest the accused and bring the accused before the judge to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as are named therein to appear and give evidence at the trial. The warrant may be in the form established by the usage and practice of the issuing court. [Emphasis added.]

<sup>6</sup> HRPP Rule 7, in relevant part, provides:

**RULE 7. THE INDICTMENT, COMPLAINT AND ORAL CHARGE.**

**(a) Use of Indictment, Complaint or Oral Charge.** The charge against a defendant is an indictment, a complaint or an oral charge filed in court. A felony shall be prosecuted by an indictment or a complaint. Any other offense may be prosecuted by an indictment, a complaint, or an oral charge.

. . . .

**(d) Nature and Contents.** The charge shall be a plain, concise and definite written statement of the essential facts constituting the offense charged; provided that an oral charge need not be in writing. An indictment shall be signed by the prosecutor and the foreman of the grand jury. A complaint shall be signed by the prosecutor, or it shall be sworn to or affirmed in writing before the prosecutor by the complaining witness and be signed by the prosecutor, except that a complaint alleging a traffic offense may be sworn to or affirmed by a police officer before another police officer as provided by law and need not be signed by the prosecutor. The charge need not contain a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The charge shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the

The December 22, 1999, Judgment of the district court  
is vacated.

DATED: Honolulu, Hawaii, October 17, 2001.

On the briefs:

Catherine P. Gutierrez,  
Deputy Public Defender,  
for defendant-appellant.

Chief Judge

Richard K. Minatoya,  
Deputy Prosecuting Attorney,  
County of Maui,  
for plaintiff-appellee.

Associate Judge

Associate Judge

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defendant is alleged therein to have violated. Formal defects,  
including error in the citation or its omission, shall not be  
ground for dismissal of the charge or for reversal of a conviction  
if the defect did not mislead the defendant to his prejudice.  
[Emphasis added.]