

NO. 23924

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
LAWRENCE PAUL HEARN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Traffic No. 99-444385)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Lawrence Paul Hearn (Hearn) appeals the October 24, 2000 judgment of the District Court of the First Circuit (the district court), convicting and sentencing him for Driving Under the Influence of Intoxicating Liquor (DUI), in violation of Hawaii Revised Statutes (HRS) § 291-4(a)(1) (Supp. 2000).

Hearn contends that: (1) the district court erred in (a) barring him from using a photocopy of the 1984 National Highway Traffic Safety Administration (NHTSA) instruction manual, entitled "Improved Sobriety Testing" (NHTSA Manual), to cross-examine the arresting officer, (b) refusing to permit Hearn's attorney to testify to authenticate the 1984 NHTSA Manual, and (c) denying admission of the photocopy of the 1984

NHTSA Manual into evidence; and (2) the district court erred in convicting Hearn because the evidence was insufficient to support a conviction as a matter of law.

We agree with Hearn's contentions as to the NHTSA Manual. The manual provided the proper techniques for administering field sobriety tests (FSTs) to Hearn, and the arresting officer was trained in administering the FSTs pursuant to NHTSA guidelines. Therefore, the manual was relevant to impeach the arresting officer as to his administration of the tests to Hearn and to assess the reliability of the test results.

However, even if the testimony of the arresting officer as to his administration of the FSTs to Hearn is disregarded, we conclude that there is substantial evidence in the record to support the district court's conclusion that Hearn was driving DUI. Specifically, the record establishes that: (1) on the evening of December 18, 1999, Hearn drove his car into the rear end of a car driven by Michelle Kuwahara (Kuwahara), who had slowed her car down due to traffic congestion on the freeway; (2) Kuwahara and the arresting officer testified that Hearn smelled of alcohol; (3) Kuwahara testified that Hearn was disoriented after the collision and repeated information to her three times; and (4) the arresting officer testified that Hearn's

eyes were "red and watery" and Hearn was "swaying back and forth slightly."

Accordingly, we affirm the judgment of the district court.

DATED: Honolulu, Hawai'i, June 5, 2002.

On the briefs:

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for defendant-appellant.

Donn Fudo, Deputy
Prosecuting Attorney, City
and County of Honolulu, for
plaintiff-appellee.