

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27141

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
EDWARD K. KU, JR., Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 04-1-166K)

K. HAMAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Lim and Fujise, JJ.)

Edward K. Ku, Jr. (Defendant) appeals the January 25, 2005 judgment of the Circuit Court of the Third Circuit (circuit court)¹ that convicted him of the charge of unauthorized entry into a motor vehicle (UEMV) (Count I), and the included offense of attempted resisting arrest (Count II). The judgment covered verdicts from two jury trials conducted pursuant to the circuit court's order granting Defendant's motion for severance of counts.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we dispose of Defendant's points of error on appeal as follows:

1. Assuming, *arguendo*, that a unanimity instruction was required at the resisting arrest trial, but see State v. Hironaka, 99 Hawai'i 198, 207-08, 53 P.3d 806, 815-16 (2002), we are confident that, "when read and considered as a whole, the

¹ The Honorable Ronald Ibarra presided.

[jury] instructions given [were not] prejudicially insufficient, erroneous, inconsistent or misleading.'" Id. at 204, 53 P.3d at 812 (quoting State v. Valentine, 93 Hawai'i 199, 204, 998 P.2d 479, 484 (2000)). Accordingly, we are not inclined to notice plain error in this regard. Hawai'i Rules of Penal Procedure (HRPP) Rule 52(a) (2005).

2. As for the UEMV trial, our review of the evidence adduced at trial reveals, first, that there was substantial evidence that Defendant lacked permission to enter the engine compartment to damage and disable the car, State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996); and second, that the circuit court did not err, much less plainly, in failing to give the jury a mistake-of-fact instruction, because there was not a scintilla of evidence that Defendant mistakenly believed he had such permission. State v. Locquiao, 100 Hawai'i 195, 205, 58 P.3d 1242, 1252 (2002) ("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" (citation and internal quotation marks omitted; emphasis supplied)).

Therefore,

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IT IS HEREBY ORDERED that the January 25, 2005 judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, August 1, 2006.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for Defendant-Appellant.

Linda L. Walton,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.

Corinne K. A. Wataneke

Presiding Judge



Associate Judge

Alexander N. J. J.

Associate Judge