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NO. 25113

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

CLYDE S. ARAKAWA, Defendant-Appellant.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 01-1-0942)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

The defendant-appellant Clyde S. Arakawa appeals from the judgment of conviction and sentence entered April 22, 2002 by the Circuit Court of the First Circuit, the Honorable Karen S.S. Ahn presiding, adjudging Arakawa guilty of, and sentencing him for, manslaughter in violation of Hawai'i Revised Statutes (HRS) § 707-702(1)(a) (1993). On appeal, Arakawa contends that the trial court erred: (1) by not presuming prejudice from pretrial publicity and changing venue; (2) by not changing venue after prejudice was confirmed in voir dire; (3) by abusing its discretion when it removed a juror and replaced her with an alternate juror; (4) by denying Arakawa's motion to suppress the felony intoxication test evidence; (5) by admitting evidence of a 1992 trespassing conviction; and (6) by allowing improper bolstering of the testimony of one of the prosecution's expert

witnesses and denying one of Arakawa's expert witnesses the opportunity to view and test the vehicles in question.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold as follows: **(1)** the circuit court did not abuse its discretion by not presuming prejudice from pretrial publicity and changing venue, inasmuch as the nature and extent of pretrial publicity did not present a substantial threat to Arakawa's right to a fair trial, see State v. Pauline, 100 Hawai'i 356, 60 P.3d 306 (2002); **(2)** the circuit court did not abuse its discretion by refusing to change venue after voir dire because (a) the circuit court conducted a voir dire examination consistent with the instructions we set forth in Pauline, 100 Hawai'i at 368, 60 P.3d at 318, (b) Arakawa ultimately passed the selected jurors, including alternates, "for cause," and (c) following jury selection, the circuit court took sufficient steps to shield the proceedings from the potential of prejudice from publicity, see State v. Wakinekona, 53 Haw. 574, 579-80, 499 P.2d 678, 682 (1972); **(3)** the circuit court did not abuse its discretion when it removed a juror during trial after receiving a complaint from a co-juror about the juror's misconduct in commenting on evidence, contrary to the court's specific instructions; the circuit court investigated the complaint by conducting an

individual voir dire examination of the jury on this issue, and the court had the opportunity to judge the credibility of the complaining juror and the juror who allegedly made the inappropriate comments, see State v. Palisbo, 93 Hawai'i 344, 356-57, 3 P.3d 510, 522-23 (App. 2000); **(4)** the circuit court did not err by denying Arakawa's motion to suppress the felony intoxication test evidence, inasmuch as: (a) Arakawa was the driver of a vehicle involved in a collision resulting in the death of another person, and the police had probable cause to believe that the blood alcohol test result would establish that Arakawa was driving under the influence of intoxicating liquor, three police officers having observed that Arakawa smelled of alcohol, had glassy, bloodshot eyes, and appeared unsteady on his feet at the collision scene; (b) exigent circumstances were present because Arakawa's blood alcohol was dissipating with time; and (c) the blood alcohol testing was done in a reasonable manner; utilizing a breath intoxilyzer machine, the accuracy of which was not challenged, see HRS § 286-163 (1993 & Supp. 2000) (the applicable statute, repealed on January 1, 2002 and replaced by HRS § 291E-21 (Supp. 2001)), and State v. Entrekin, 98 Hawai'i 221, 97 P.3d 336 (2002); **(5)** the circuit court did not abuse its discretion when it admitted certain evidence concerning Arakawa's 1992 intoxication incident and related trespassing conviction because (a) Arakawa was charged with "recklessly" causing the

death of another (HRS § 707-702(1)(a)), (b) his state of mind and knowledge of the effect alcohol consumption had upon his judgment was at issue, inasmuch as the prosecution had to prove that Arakawa consciously disregarded a substantial and unjustifiable risk that his conduct would cause the death of another, (c) the 1992 intoxication event and related trespassing conviction was relevant to prove that, when Arakawa decided to drive on October 7, 2000 after consuming eleven beers and one shot of hard liquor, he was aware that his judgment was seriously impaired when he was under the influence of alcohol, and (d) the court, after being briefed and holding a hearing on this specific evidentiary issue, balanced the probative value of the evidence against its prejudicial effect, concluded that the evidence was more probative than prejudicial, and gave cautionary instructions to the jury (both before and after the evidence was introduced) limiting use of the evidence for the sole purpose of deciding Arakawa's state of mind, see State v. Robinson, 79 Hawai'i 468, 903 P.2d 1289 (1995); State v. St. Clair, 101 Hawai'i 280, 287-89, 67 P.3d 779, 786-88 (2003); **(6)** the circuit court erred in admitting and failing to strike testimony (one question and answer) that attempted to improperly bolster the testimony of one of the prosecution's expert witnesses, but the error was harmless beyond a reasonable doubt considering the totality of the evidence concerning Arakawa's drinking of alcohol on the day and

night in question; and the circuit court did not abuse its discretion in denying Arakawa's mid-trial oral motion to allow one of his expert witnesses to do special testing on the vehicles involved in the collision on the day prior to her testifying in trial because the testing could have been done prior to trial, see State v. Arakawa, 101 Hawai'i 26, 61 P.3d 537 (App. 2002); State v. Furutani, 76 Hawai'i 172, 179, 873 P.2d 51, 58 (1994).

Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, September 19, 2003.

On the briefs:

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for defendant-appellant  
Clyde S. Arakawa

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