

*** NOT FOR PUBLICATION ***

NO. 24738

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

DALE W. GOODIN, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 01-1-0015)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Dale W. Goodin appeals from the November 6, 2001 judgment of the circuit court of the first circuit, the Honorable Marie N. Milks presiding, convicting him of and sentencing him for unauthorized control of a propelled vehicle (UCPV), in violation of Hawai'i Revised Statutes (HRS) § 708-836 (1993).¹ On appeal, Goodin argues that: (1) the circuit court abused its discretion in limiting and restricting defense counsel's cross-examination of Officer Troy Komoda (Officer Komoda) and Detective Terry Bledsoe (Detective Bledsoe), thereby violating Goodin's constitutional right to a fair trial, right to due process, and right to confront adverse witnesses; (2) the

¹ HRS § 708-836 provides:

(1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally 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.

(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 reasonably believed that the owner would have authorized the use had the owner known of it.

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

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circuit court erred in allowing the State of Hawai'i [hereinafter, "the prosecution"] to elicit from Goodin that he had previously been arrested for UCPV; and (3) the deputy prosecuting attorney (DPA) committed prosecutorial misconduct when she explained to the jury during closing argument about the history of HRS § 708-836, inasmuch as the DPA was, in effect, giving unsworn testimony as a witness.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that: (1) the circuit court did not abuse its discretion by limiting and restricting defense counsel's cross-examination of Officer Komoda and Detective Bledsoe, inasmuch as defense counsel's line of questioning regarding what Officer Komoda and Detective Bledsoe did not do during the course of their investigation was repetitive and irrelevant, see State v. Peseti, 101 Hawai'i 172, 65 P.3d 119 (2003); State v. Faulkner, 1 Haw.App. 651, 624 P.2d 940 (1981); (2) the circuit court did not err in admitting evidence of Goodin's prior arrest for UCPV, inasmuch as Goodin "opened the door" when he claimed that he did not know that there was a difference between driving and stealing for purposes of UCPV, see United States v. Hegwood, 977 F.2d 492, 496 (9th Cir. 1992); and (3) the DPA did not commit prosecutorial misconduct during closing argument when she incorrectly explained the history of the UCPV law, inasmuch as the DPA's misstatement of the law was not unduly prejudicial and did not divert the jury from its duty to decide the case on the evidence, see State v. Klinge, 92 Hawai'i 577, 944 P.2d 509 (2000). Assuming arguendo that the DPA's misstatement of the UCPV law constituted prosecutorial

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misconduct, it was, nevertheless, harmless beyond a reasonable doubt, inasmuch as (a) the record does not suggest that the DPA's misstatement of the law invited the jurors to misapply the relevant standard to determine whether Goodin committed the charged offense, (b) the circuit court immediately clarified to the jurors the correct statement of law, and (c) the strength of the prosecution's evidence against Goodin, coupled with the lack of evidence to support Goodin's defense, weighed heavily in favor of the prosecution, see State v. St. Clair, 101 Hawai'i 280, 67 P.3d 779, reconsideration denied, 101 Hawai'i 420, 70 P.3d 646 (2003); State v. Rogan, 91 Hawai'i 405, 984 P.2d 1231 (1999); State v. Kupihea, 80 Hawai'i 307, 909 P.2d 1122 (1996).

Therefore,

IT IS HEREBY ORDERED that the circuit court's November 6, 2001 judgment of guilty conviction and sentence, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, January 26, 2004.

On the briefs:

Edward K. Harada,
Deputy Public Defender,
for defendant-appellant

Loren J. Thomas,
Deputy Prosecuting Attorney,
for plaintiff-appellee