

*** NOT FOR PUBLICATION ***

NO. 25432

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

ROSELIO R. HERNANDEZ, Defendant-Appellant

EMERSON
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STATE OF HAWAII

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(REPORT NO. G-99482H)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant, Roselio R. Hernandez [hereinafter "Hernandez"] appeals from the third circuit district court's¹ September 30, 2002 judgment convicting him of the offenses of failure to appear in answer to a citation, in violation of Hawai'i Revised Statutes [hereinafter "HRS"] § 803-6(e) (1993),² mandatory use of child passenger restraints, in violation of HRS § 291-11.5 (Supp. 2001),³ and mandatory use of seatbelts, in

¹ The Honorable Jeffrey Choi presided.

² HRS § 803-6(e) states as follows:

(e) If a person fails to appear in answer to the citation; or if there is reasonable cause to believe that the person will not appear, a warrant for the person's arrest may be issued. Wilful failure to appear in answer to the citation may be punished by a fine of not more than \$100 or imprisonment of not more than 30 days or both.

³ HRS § 291-11.5 provides, in pertinent part, the following:

§291-11.5 Child passenger restraints. (a) Except as otherwise provided in this section, no person operating a motor vehicle on a public highway in the State shall transport a child under four years of age unless the person operating the motor vehicle ensures that the child is properly restrained in a child passenger restraint system approved by the United States Department of Transportation at the time of its manufacture.

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violation of HRS § 291-11.6 (Supp. 2001).⁴ The district court sentenced Hernandez to five days incarceration and imposed a fine of five-hundred and forty-five dollars. On appeal, Hernandez asserts the following three points of error: (1) there was insufficient evidence to support Hernandez's conviction of failure to appear where his failure to appear was not "wilful"; (2) there was insufficient evidence to support Hernandez's conviction of mandatory use of child passenger restraints where the State of Hawai'i failed to prove that the child was under the age of four; and (3) the court erred by excluding Hernandez's testimony -- that his wife informed him that the date circled on

⁴ HRS § 291-11.6 states, in pertinent part, as follows:

- §291-11.6 Mandatory use of seat belts, when, penalty.** (a) Except as otherwise provided by law, no person:
- (1) Shall operate a motor vehicle upon any public highway unless the person is restrained by a seat belt assembly and any passengers in the front or back seat of the motor vehicle are restrained by a seat belt assembly if between the ages of four and fourteen, or are restrained pursuant to section 291-11.5 if under the age of four;
 - (2) If fifteen years of age or more shall be a passenger in the front seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly; and
 - (3) If between the ages of fifteen and seventeen, shall be a passenger in the back seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly.

As used in this section "seat belt assembly" means the seat belt assembly required to be in the motor vehicle under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the federal National Traffic and Motor Vehicle Safety Act of 1996, as amended, unless original replacement seat belt assemblies are not readily available. If replacement assemblies are not readily available, seat belts of federally approved materials with similar protective characteristics may be used. Such replacement seat belt assemblies shall be permanently marked by the belt manufacturer indicating compliance with all applicable federal standards.

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the receipt was his next court date -- where it was offered as evidence of his state of mind and not for the truth of the matter asserted.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) the record contains substantial evidence to support Hernandez's conviction of the offense of failure to appear in answer to a citation;⁵ (2) the record contains substantial evidence to support Hernandez's conviction of the offense of mandatory use of child passenger restraints;⁶ and (3) the district court properly excluded the evidence in question inasmuch as (a) the receipt, allegedly identifying February 13, 2002 as Hernandez's court date, was not provided to the prosecution following the

⁵ See HRS § 803-6(e) ("Wilful failure to appear in answer to the citation may be punished by a fine of not more than \$100 or imprisonment of not more than 30 days or both."); HRS § 702-210 (1993) ("A requirement that an offense is committed wilfully is satisfied if a person acts knowingly with respect to the elements of the offense, unless a purpose to impose further requirements appears."); HRS § 702-206(2) (1993) (defining the term "knowingly"); State v. Bui, 104 Hawai'i 462, 467, 92 P.3d 471, 476 (2004) ("Substantial evidence is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to reach a conclusion.") (quotation marks omitted) (citation omitted); State v. Masaniai, 7 Haw. App. 586, 589, 788 P.2d 176, 178 (1990), overruled on other grounds by State v. Hicks, 71 Haw. 564, 798 P.2d 906 (1990) ("The record shows that Masaniai was personally instructed to appear in court on September 25, 1986 and that he did not appear on that date or thereafter until he appeared involuntarily on November 4, 1988. The only reasonable inference that can be drawn from these facts is that Masaniai's nonappearance was intentional and contemptuous.").

⁶ See HRS § 291-11.5 (delineating the offense of mandatory use of child passenger restraints); Bui, 104 Hawai'i at 467, 92 P.3d at 476 ("Substantial evidence is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to reach a conclusion.") (quotation marks omitted) (citation omitted).

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prosecution's discovery request, (b) the evidence was irrelevant insofar as Hernandez failed to establish whether he had his wife attempt to obtain the court date before or after it had already passed. In light of our holding, we need not address the remaining point of error. Therefore,

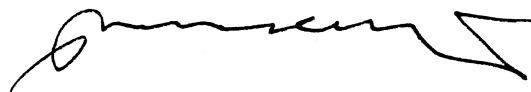
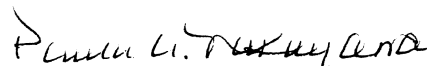
IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, April 28, 2006.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for defendant-appellant
Roselio R. Hernandez

Jason M. Skier,
Deputy Prosecuting Attorney,
for plaintiff-appellee
State of Hawai'i



James E. Duddy, Jr.