

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 25530

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JOAQUIN AYRES, Defendant-Appellant

LEONARDO  
ENM  
APPELLATE COURTS  
STATE OF HAWAI'I

2006 MAY 25 AM 11:33

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT  
(CR. NOS. 269252MK, 268786MK)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Joaquin Ayres ("Ayres") appeals from the denial of his oral motion for judgment of acquittal on November 8, 2002, and the judgment of the District Court of the Fifth Circuit<sup>1</sup> ("district court") entered on November 8, 2002. At trial, Ayres was found guilty of his March 6, 2002 failures to (1) wear a seat belt in violation of HRS § 291-11.6 (Supp. 2002)<sup>2</sup> and (2) possess no-fault motor vehicle insurance in violation of

<sup>1</sup> The Honorable Trudy K. Senda presided.

<sup>2</sup> HRS § 291-11.6 provides in pertinent part:

(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

. . . .

(e) A person who fails to comply with the requirements of this section shall be subject to a fine of \$45 for each violation and a surcharge of \$10 which shall be deposited into the neurotrauma special fund.

(Emphasis added.)

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HRS § 431:10C-104 (Supp. 1997)<sup>3</sup>.

On appeal, Ayres essentially argues that (1) he was never arraigned as to the HRS § 431:10C-104 violation, such that his judgment and sentence as to that violation must be reversed, (2) the district court plainly erred in failing to engage Ayres in the colloquy required for him to validly waive his constitutional right to testify on his own behalf as set forth in Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995) ("Tachibana colloquy"), and (3) the district court improperly denied Ayres' motion for judgment of acquittal where Plaintiff-Appellee State of Hawai'i ("prosecution") failed to adduce substantial evidence that Ayres was operating his vehicle on a public highway, such that Ayres' conviction must be reversed on all counts, insofar as HRS §§ 291-11.6 and 431:10C-104 both require that the violation take place on a public highway.

Upon carefully reviewing of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold as follows:

(1) The prosecution failed to arraign Ayres on the HRS § 431:10C-104 charge in violation of his constitutional rights. Inasmuch as (a) Ayres' counsel waived an oral reading of the charges against him at Ayres' April 26, 2002 arraignment hearing and (b) because Ayres was never provided with a written complaint, Ayres was required to receive an oral statement of the

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<sup>3</sup> HRS § 431:10C-104 provides in pertinent part:

(a) . . . . no person shall operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured at all times under a motor vehicle insurance policy.

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charges against him by the prosecution at the commencement of trial pursuant to Hawai'i Rules of Penal Procedure ("HRPP") Rule 5(b)(1) (2000)<sup>4</sup> and this court's caselaw. "[T]he onus is on the prosecution to inform the accused fully of the accusations presented against him or her", because "the principle of fundamental fairness, essential to the concept of due process of law, dictates that the defendant in a criminal action should not be relegated to a position from which he or she must speculate as to what crime he or she will have to meet in defense." State v. Sprattling, 99 Hawai'i 312, 318, 55 P.3d 276, 282 (2002) (emphasis added) (citations omitted) (internal quotation marks and brackets omitted).

It is clear from a careful review of the record that the prosecution wholly failed to orally charge Ayres at trial as to the HRS § 431:10C-104 offense. Because the prosecution's charge cannot be reasonably interpreted to charge a crime as to the HRS § 431:10C-104 violation, see id., his HRS § 431:10C-104 conviction must be reversed. State v. Cummings, 101 Hawai'i 139, 142, 63 P.3d 1109, 1112 (2003) ("An oral charge, complaint, or

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<sup>4</sup> HRPP 5(b)(1) states in pertinent part:

(1) Arraignment. In the district court, if the offense charged against the defendant is other than a felony, the complaint shall be filed or the oral charge stated, a copy of such charge and any affidavits in support thereof, and a copy of the appropriate order, if any, shall be furnished to the defendant and proceedings shall be had in accordance with this section (b). Arraignment shall be in open court and shall consist of the reading of the complaint or the statement of the oral charge to the defendant, or stating the substance of the charge and calling on the defendant to plead thereto. The defendant may waive the reading of the complaint or the statement of the oral charge at arraignment provided that an oral charge shall be stated at the commencement of trial . . . .

(Emphasis added.)

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indictment that does not state an offense contains within it a substantive jurisdictional defect, rather than simply a defect in form, which renders any subsequent trial, judgment of conviction, or sentence a nullity." (Emphasis added.) (Citations omitted.).

(2) The Tachibana colloquy was not required because Ayres' only remaining conviction on review is for the civil infraction of failure to wear a seat belt under HRS § 291-11.6. "A person who fails to comply with the requirements of this section shall be subject to a fine of \$45 for each violation and a surcharge of \$10 which shall be deposited into the neurotrauma special fund." HRS § 291-11.6(e) (emphasis added).<sup>5</sup> Because violation of HRS § 291-11.6(a)(1) carries no possibility of imprisonment, it is a civil infraction, as confirmed by HRS Chapter 291D ("Adjudication of Traffic Infractions"). Violation of HRS § 291-11.6 is a "traffic infraction" under HRS § 291D-2 (Supp. 1997)<sup>6</sup> because it is a violation of statute "relating to traffic movement and control. . . . for which the prescribed penalties do not include imprisonment." (Emphasis added.) And as per HRS § 291D-3 (Supp. 1997), "[t]raffic infractions shall not be classified as criminal offenses." (Emphasis added.)

Ayres correctly points out that "[i]n order to protect the right to testify under the Hawai'i Constitution, trial courts

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<sup>5</sup> In the instant case, Ayres was sentenced to a total of \$67 in fees and fines and no jail time for the HRS § 291-11.6 conviction.

<sup>6</sup> HRS § 291D-2 states in pertinent part:

"Traffic infraction" means all violations of statutes, ordinances, or rules relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include imprisonment."

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must advise criminal defendants of their right to testify and must obtain an on-the-record waiver of that right in every case in which the defendant does not testify. [citing Tachibana, 79 Hawai'i at 236, 900 P.2d at 1303]" (Emphasis added.). However, the rights conferred upon defendants charged with criminal offenses under Tachibana, by definition, do not attach to civil infractions. Because Ayres' remaining "conviction" on review, failure to wear a seat belt under HRS § 291-11.6, is a civil matter, a Tachibana colloquy was unnecessary.

(3) Viewing the evidence in a light most favorable to the prosecution, inasmuch as the combined testimonies of Kauai Police Department Sergeants Lawrence Stem and Robert Gausepohl indicated that Ayres was stopped on a state roadway while operating a motor vehicle without wearing a seat belt, a reasonable mind could fairly conclude that Ayres was encountered driving on a public highway without a seat belt beyond a reasonable doubt. See State v. Keawe, 107 Hawai'i 1, 4, 108 P.3d 304, 307 (2005); HRS § 291-11.6; see also HRS § 264-1(a) (1993) ("all roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government are declared to be public highways." (Emphases added.)) Consequently, the lower court did not err in denying Ayres' motion for judgment of acquittal as to the HRS § 291-11.6 no seat belt offense.

(4) When considering the evidence in the strongest light for the prosecution, Sergeant Stem's testimony that he witnessed Sergeant Gausepohl stop Ayres on what he later

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described as a "state roadway," combined with Gausepohl's testimony that Ayres was not wearing a seat belt, constituted credible evidence of sufficient quality and probative value to enable a person of reasonable caution to find Ayres guilty of not wearing a seat belt while driving on a public highway in violation of HRS § 291-11.6. See State v. Maldonado, 108 Hawai'i 436, 442, 121 P.3d 901, 907 (2005); State v. Pulse, 83 Haw. 229, 244, 925 P.2d 797, 813 (1996) ("The testimony of one percipient witness can provide sufficient evidence to support a conviction."). Consequently, Ayres' HRS § 291-11.6 no seat belt conviction must be upheld.

Therefore,

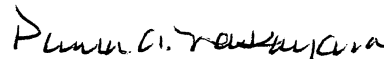
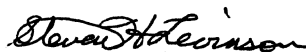
IT IS HEREBY ORDERED that Ayres' HRS § 431:10C-104 conviction is reversed, and that Ayres' HRS § 291-11.6 conviction is affirmed.

DATED: Honolulu, Hawai'i, May 25, 2006.

On the briefs:

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Roland J. Talon, Deputy  
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State of Hawai'i



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