

**** NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER ****

NO. 25469

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

STANLEY TOSHIO YOKOTSUJI, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Traffic Nos. 002174116; 002174118)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Stanley Toshio Yokotsuji ("Yokotsuji") appeals from the judgment of the District Court of the First Circuit¹ ("district court") entered October 8, 2002, as well as from the denial of his motion to suppress evidence filed July 19, 2002. At trial, Yokotsuji was found guilty of operating a vehicle under the influence of an intoxicant ("OVUII") in violation of Hawai'i Revised Statutes ("HRS") § 291E-61 (Supp. 2001),² and of failure to wear a seat belt in

¹ The Honorable Leslie Hayashi presided.

² HRS § 291E-61 (Supp. 2001), the version in effect at the time of Yokotsuji's arrest, provided in pertinent part:

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

(1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty

(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

(continued...)

violation of HRS § 291-11.6 (Supp. 2000).³

On appeal, Yokotsuji essentially argues that: (1) the district court erred in denying his July 19, 2002 motion to suppress evidence discovered immediately following a May 9, 2002 traffic stop, as the police officer who stopped and arrested him (Officer Rudolph Mitchell III of the Honolulu Police Department) did not have the reasonable suspicion required to initiate the traffic stop; (2) the district court clearly erred by finding

²(...continued)

(2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a):

(A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;

(B) Either one of the following:

(i) Not less than two hundred forty hours of community service work; or

(ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and

(C) A fine of not less than \$500 but not more than \$1,500.

³ HRS § 291-11.6 (Supp. 2000), the version in effect at the time of Yokotsuji's arrest, provided 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 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[.]

that Officer Mitchell was more credible than Yokotsuji for purposes of both Yokotsuji's motion to suppress and its ultimate finding of guilt; and (3) no substantial evidence existed to support his convictions.

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 as follows:

(1) Officer Mitchell had the reasonable suspicion necessary to perform a valid traffic stop of Yokotsuji. There is substantial evidence in the record that Mitchell pointed to specific and articulable facts (his observation of Yokotsuji crossing the intersection of Dillingham Boulevard and Kohou Street at night in a well-lit area while Yokotsuji was not wearing his seat belt) showing that Yokotsuji was violating Hawaii's seat belt law, such that the traffic stop was warranted. See State v. Bolosan, 78 Hawai'i 86, 92, 890 P.2d 673, 679 (1995). Thus, the district court properly denied Yokotsuji's motion to suppress.

(2) Yokotsuji's argument that "the trial court erred in entering a finding of fact that Officer Mitchell was more credible than [he was]" must fail because "it is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." State v. Martinez, 101 Hawai'i 332, 340, 68 P.3d 606, 614 (2003) (emphasis added) (citations omitted) (internal quotation marks omitted) (brackets omitted) (also stating that "[i]t is well-settled that

the trier of fact may accept or reject any witness's testimony in whole or in part[,]” see id. (citations omitted) (internal quotation marks omitted) (brackets omitted)). Because we will not re-evaluate the credibility of witnesses upon appeal, we therefore decline to hold that the district court clearly erred in finding Mitchell to be the more credible witness.

(3) Substantial evidence existed to support Yokotsuji's convictions. With respect to the HRS § 291E-61 OVUII conviction, given (a) that Yokotsuji had just returned from a bar on the night of the traffic stop, (b) Yokotsuji had been drinking at that bar, (c) Mitchell's observation of a strong odor of an “alcoholic type beverage” about Yokotsuji, (d) Mitchell's observation that Yokotsuji had red, glassy, watery and bloodshot eyes, (e) Mitchell's observation that Yokotsuji's speech was “heavily slurred and mumbled[,]” (f) Mitchell's observations of Yokotsuji's fumbling for his insurance and registration papers, and (g) Mitchell's testimony that Yokotsuji displayed multiple “clues” of possible impairment in all phases of the administered field sobriety test, we hold that, when viewing the evidence in the strongest light for the prosecution, a reasonable fact-finder could rationally infer from the evidence that Yokotsuji operated his vehicle “while under the influence of alcohol in an amount sufficient to impair the person's normal mental facilities or ability to care for the person and guard against casualty.” See State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996), and HRS § 291E-61(a)(1) (Supp. 2001). As such, Yokotsuji's OVUII conviction is affirmed.

Finally, as to Yokotsuji's HRS § 291-11.6 no seat belt conviction, we hold that, when viewing the evidence in the strongest light for the prosecution, Mitchell's observations (of Yokotsuji crossing the Dillingham/Kohou intersection while not wearing a seat belt) constituted credible evidence of sufficient quality and probative value to enable a person of reasonable caution to find Yokotsuji guilty of failure to wear a seat belt 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 Hawai'i 229, 244, 925 P.2d 797, 813 (1996) ("The testimony of one percipient witness can provide sufficient evidence to support a conviction."). Thus, the district court's no seat belt conviction is affirmed.

Therefore,

IT IS HEREBY ORDERED that (1) the district court's denial of Yokotsuji's motion to suppress is affirmed, and (2) Yokotsuji's HRS § 291E-61 OVUII and HRS § 291-11.6 no seat belt convictions are affirmed.

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

On the briefs:

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