

DISSENTING OPINION BY FUJISE, J.

I respectfully dissent.

As I believe the charge in this case is fatally defective under State v. Wheeler, 121 Hawai'i 383, 219 P.3d 1170 (2009) and the district court lacked subject matter jurisdiction over the case, State v. Cummings, 101 Hawai'i 139, 145, 63 P.3d 1109, 1115 (2003), I would vacate and remand this case for dismissal without prejudice. Given this determination, I could not reach the other issues raised by Defendant-Appellant Robert N. Tominiko on appeal. In re Application of Rice, 68 Haw. 334, 335, 713 P.3d 426, 427 (1986) ("though a [district] court is found to have lacked jurisdiction, we have jurisdiction here on appeal, not of the merits, but for the purpose of correcting an error in jurisdiction.") (internal quotation marks and citation omitted).

