

NO. CAAP-12-0000261

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
RONALD IONA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Honolulu Division)
(Case No. 1DTA-11-04699)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Fujise and Ginoza, JJ.)

Defendant-Appellant Ronald Iona (Iona) appeals from the Judgment filed on March 1, 2012, in the District Court of the First Circuit (District Court).¹ Iona was charged by complaint with Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) (Supp. 2011). Prior to trial, Iona orally moved to dismiss the OVUII charge for failure to allege a mens rea. The District Court denied the motion. After a bench trial, the District Court found Iona guilty as charged.

On appeal, Iona argues that the District Court erred in denying his motion to dismiss because the OVUII charge was deficient for failing to allege a mens rea. In State v. Nesmith, 127 Hawai'i 48, 53, 61, 276 P.3d 617, 622, 630 (2012), the Hawai'i

¹ The Honorable Lono J. Lee presided.

Supreme Court held that a mens rea must be alleged in an OVUII charge asserting a violation of HRS § 291E-61(a)(1) in order to provide fair notice of the nature and cause of the accusation. Plaintiff-Appellee State of Hawai'i concedes error, and we agree with that concession. Pursuant to Nesmith, we conclude that Iona's HRS § 291E-61(a)(1) charge was deficient for failing to allege a mens rea.

IT IS HEREBY ORDERED that the District Court's Judgment is vacated, and the case is remanded to the District Court with instructions to dismiss the complaint without prejudice.

DATED: Honolulu, Hawai'i, January 7, 2013.

On the briefs:

James S. Tabe
Deputy Public Defender
for Defendant-Appellant

Chief Judge

Sonja P. McCullen
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

Associate Judge

Associate Judge