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Supreme Court
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SCWC-12-0000897

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

CIERRA ANN M. KAM, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000897; CASE NO. 1DTA-12-00359)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakayama, McKenna,
Pollack, and Wilson, JJ.)

Petitioner/Defendant-Appellant Cierra Ann Kam seeks review of the Intermediate Court of Appeals' (ICA) January 20, 2015 Judgment, entered pursuant to its November 26, 2014 Opinion, affirming the District Court of the First Circuit's September 28, 2012 Judgment and Notice of Entry of Judgment.¹ The district court found Kam guilty of Operating a Vehicle Under the Influence

¹ The Honorable David W. Lo presided.

of an Intoxicant (OVUII) as a repeat offender, in violation of Hawai'i Revised Statutes (HRS) § 291E-61; and Operating a Vehicle after License and Privilege Have Been Suspended or Revoked for Operating a Vehicle Under the Influence of an Intoxicant (OVLPSR-OVUII) as a first-time offender, in violation of HRS § 291E-62.

On certiorari, Kam contends, inter alia, that the ICA erred in holding that the district court properly permitted the State to amend the charge against Kam to allege the required mens rea for the offense. Kam argues that the defective charge rendered the district court without jurisdiction over the case, and, therefore, without jurisdiction to permit the State to amend the charge. We disagree. In Schwartz v. State, we recently held that "the failure of a charging instrument to allege an element of an offense does not constitute a jurisdictional defect that fails to confer subject-matter jurisdiction to the district court." No. SCWC-10-199, 2015 WL 7370086, at *21 (Haw. Nov. 19, 2015). Accordingly, the ICA correctly concluded that the district court properly permitted the State to amend the charge.

We further conclude that Kam's remaining claims lack merit.

IT IS HEREBY ORDERED that the ICA's Judgment on Appeal is affirmed.

DATED: Honolulu, Hawai'i, February 25, 2016.

Taryn R. Tomasa
for petitioner

Brian R. Vincent
for respondent

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

