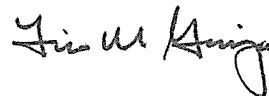


CONCURRING OPINION BY GINOZA, J.

I concur with the majority that the judgment of the District Court should be affirmed, but write separately because the Summary Disposition Order relies on State v. Nesmith, No. CAAP-10-0000072, 2011 WL 2685719 (Hawai'i App. June 22, 2011), which in turn relied on HRS § 806-28 (1993) to address that part of the charge under HRS § 291E-61(a)(1). HRS § 806-28 applies to Circuit Courts and in my view is not applicable to District Court proceedings, such as in this case. It is not necessary to rely on HRS § 806-28 to conclude that mens rea need not be included in the charge in this case.

HRS § 291E-61(a)(1) does not contain a state of mind provision and, therefore, the charge for violating HRS § 291E-61(a)(1) is sufficient without alleging mens rea. See State v. Wheeler, 121 Hawai'i 383, 219 P.3d 1170 (2009); State v. Mita, 124 Hawai'i 385, 392, 245 P.3d 458, 465 (2010) ("In general, where the statute sets forth with reasonable clarity all essential elements of the crime intended to be punished, and fully defines the offense in unmistakable terms readily comprehensible to persons of common understanding, a charge drawn in the language of the statute is sufficient") (citation, internal quotation marks and brackets omitted); State v. Yonaha, 68 Haw. 586, 723 P.2d 185 (1986); State v. Faulkner, 61 Haw. 177, 599 P.2d 285 (1979); State v. Jendrusch, 58 Haw. 279, 567 P.2d 1242 (1977).¹ See also Territory v. Tacuban, 40 Haw. 208, 212 (1953).



¹ In Yonaha, Faulkner and Jendrusch, the Hawai'i Supreme Court held that charges were insufficient for failing to allege intent because intent was included in the applicable criminal statutes and the charges therefore did not track the language of the statute. Unlike those cases, HRS § 291E-61(a)(1) does not include a state of mind provision. Further, although Yonaha, Faulkner and Jendrusch reference intent as an "element," these cases preceded State v. Klinge, 92 Hawai'i 577, 584 n.3, 994 P.2d 509, 516 n.3 (2000), which clarified that state of mind is not an element of an offense.