

DISSENTING OPINION BY LEONARD, J.

I respectfully dissent. It appears that under State v. Mita, 124 Hawai'i 385, 245 P.3d 458 (2010), the citation and the oral charge herein gave Defendant-Appellant Patrick K. Cui (Cui) fair notice of the offense. Applying the supreme court's reasoning in Mita, it does not appear that the definition of "public park" in Revised Ordinances of Honolulu (ROH) § 10-1.1 (2009) creates an additional essential element of the animal-in-the-park offense set forth in ROH § 10-1.2(a)(9) (2009) (**Animal in Park**). The charge specified that the alleged offense occurred in a public park. The statutory definition of "public park" is consistent with its commonly understood meaning in the same way that the statutory definition of "animal nuisance" was held to be consistent with its commonly understood meaning in Mita. Mita, 124 Hawai'i at 391, 245 P.3d at 464. The charge in this case appears to be distinguishable from the charge in State v. Wheeler, 121 Hawai'i 383, 219 P.3d 1170 (2009), because "the charge in Wheeler contained a hidden element," whereas the statutory definition of the term "public park" does not create an additional essential (hidden) element of the offense of Animal in Park and is consistent with the commonly understood meaning of the term. Mita, 124 Hawai'i at 395, 245 P.2d at 468 (distinguishing Wheeler based on hidden element in Wheeler). Accordingly, I conclude that the charge against Cui was sufficient.


Associate Judge