

NO. CAAP-12-0000371

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
EMMANUEL DAGUPION, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Wahiawa Division)
(CASE NO. 1DTC-11-018379)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Emmanuel Dagupion (Dagupion) appeals from the Judgment filed on March 15, 2012, in the District Court of the First Circuit (District Court).^{1/} Dagupion was charged with excessive speeding for exceeding the applicable speed limit by 30 miles per hour or more, in violation of Hawaii Revised Statutes (HRS) § 291C-105(a)(1) and (c)(1) (2007 & Supp. 2012). Dagupion did not object to the sufficiency of the excessive speeding charge in the District Court. After a bench trial, he was found guilty as charged.

I.

On appeal, Dagupion argues that: (1) the excessive speeding charge was defective and infringed upon his right to due process because it failed to allege a mens rea; and (2) the

¹The Honorable Paula Devens presided.

prosecution failed to lay a sufficient foundation for the District Court to admit the police officer's testimony regarding the speed reading from his laser gun.

The Hawai'i Supreme Court's recent decision in State v. Apollonio, SCWC-11-0000695, slip op., 2013 WL 5574921 (Hawai'i Oct. 10, 2013), provides controlling authority for our decision in Dagupion's case. Based on Apollonio, we conclude that "the charge omitted the requisite state of mind, and therefore it cannot be 'reasonably construed to state an offense.'" Id. at 12, 2013 WL 5574921, at *5 (citation and brackets omitted). Because the charge was deficient for failing to allege a mens rea, we vacate Dagupion's conviction and remand the case with instructions to dismiss the charge without prejudice. Id. at 12-13, 2013 WL 5574921, at *5. In light of our resolution of Dagupion's claim that the charge was defective, we do not address his claim that an inadequate foundation was laid for the admission of testimony regarding the laser gun speed reading.

II.

We vacate the District Court's Judgment and remand the case with instructions to dismiss the excessive speeding charge without prejudice.

DATED: Honolulu, Hawai'i, October 25, 2013.

On the briefs:

Cherylann Miyamoto
Deputy Public Defender
for Defendant-Appellant

Chief Judge

Brandon H. Ito
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

Associate Judge

Associate Judge