

Electronically Filed
Supreme Court
SCWC-12-0000602
28-JAN-2016
08:41 AM

SCWC-12-0000602

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII,
Respondent/Plaintiff-Appellee,

vs.

EDDY A. ABORDO,
Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0000602; CASE NO. 1DTC-11-082314)

SUMMARY DISPOSITION ORDER

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

Petitioner/Defendant-Appellant Eddy A. Abordo (Abordo) seeks review of the Intermediate Court of Appeals' (ICA) April 13, 2015 Judgment on Appeal, entered pursuant to its February 23, 2015 Summary Disposition Order, which vacated the District Court of the First Circuit's (district court)¹ May 30, 2012

¹ The Honorable Linda K.C. Luke presided.

Judgment and remanded the case for a new trial.² The district court found Abordo guilty of Operating a Vehicle after License and Privilege Have Been Suspended or Revoked for Operating a Vehicle Under the Influence of an Intoxicant (OVLPSR-OVUII), in violation of Hawai'i Revised Statutes § 291E-62 (2007 & Supp. 2010).

On certiorari, Abordo contends, inter alia, that the ICA erred in holding that the district court properly permitted the State to amend the charge against Abordo to allege the required mens rea for the offense. Abordo 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." 136 Hawai'i 258, 282, 361 P.3d 1161, 1185 (2015). Accordingly, the ICA correctly concluded that the district court properly permitted the State to amend the charge.

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

² The ICA vacated and remanded the case based on the district court's misstatement of the standard of proof.

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

DATED: Honolulu, Hawai'i, January 28, 2016.

James S. Tabe
for petitioner

/s/ Mark E. Recktenwald

Brian R. Vincent
for respondent

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

