

NO. CAAP-15-0000402

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
RACHEL VIAMOANA UI, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(NORTH & SOUTH KONA DIVISION)
(CASE NO. 3DTA-11-02996)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant Rachel Viamoana Ui (**Ui**) appeals from the Judgment and Notice of Entry of Judgment, filed on April 13, 2012, in the District Court of the Third Circuit (**District Court**).¹ Ui was convicted of Operating a Vehicle Under the Influence of an Intoxicant (Driving Under the Influence of an Intoxicant), in violation of Hawaii Revised Statutes (**HRS**) § 291E-61(a) (Supp. 2015), and Driving Without a License, in violation of HRS § 286-102(b) (2007 and Supp. 2015).

¹ The Honorable Joseph P. Florendo presided.

On appeal, Ui contends the District Court plainly erred by failing to dismiss, *sua sponte*, the charges because they failed to allege the requisite *mens rea*.

The State admits that the *mens rea* was not alleged in each of the charges. However, the State argues that the District Court found Ui guilty of violating both HRS § 291E-61(a)(1) and (a)(4) and that *mens rea* need not be alleged under (a)(4) because it is a strict liability offense. The State also contends that Ui's conviction for Driving Without a License should be affirmed because she was not prejudiced by the failure to allege the *mens rea* in the charge, Ui admitted at trial that she had no license, and Ui's defense was that she was not driving a vehicle.

Ui disputes that she was convicted of violating HRS § 291E-61(a)(4).

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Ui's points of error as follows:

(1) In finding Ui guilty of Driving Under the Influence of an Intoxicant, the District Court stated:

All right. The Court has considered the evidence presented and the arguments of counsel and will find that the state has proven beyond a reasonable doubt that the defendant did commit both offenses charged in the complaint: Driving Under the Influence of an Intoxicant.

And that she did operate or assume actual physical control of a motor vehicle on a public road, street, or highway while under the influence of alcohol in an amount sufficient to impair her normal mental faculties or ability to care for herself or others against casualty and/or with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(Emphasis added.)

Thus, Ui was convicted of violating both HRS § 291E-61(a)(1) and (a)(4). Violation of HRS § 291E-61(a)(4) is a strict liability offense for which *mens rea* need not be proven. State v. Nesmith, 127 Hawai'i 48, 58-61, 276 P.3d 617, 627-30 (2012). Ui does not challenge the sufficiency of the evidence to convict her for violating HRS § 291E-61(a)(4).

(2) Because HRS § 286-102 does not specify the requisite state of mind, HRS § 702-204 (2014) applies. HRS § 702-204 provides:

When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.

Accordingly, the offense of Driving Without a License requires that the charge allege that the specified action was done intentionally, knowingly, or recklessly.

"A charge that fails to charge a requisite state of mind cannot be construed reasonably to state an offense and thus the charge is dismissed without prejudice because it violates due process." State v. Apollonio, 130 Hawai'i 353, 359, 311 P.3d 676, 682 (2013). A charge should be dismissed without prejudice even if an objection was not raised at trial and the defendant was not prejudiced by the omission of the state of mind. Id. at 359 n.9, 311 P.3d at 682 n.9 (citations omitted). Accordingly, the offense of Driving Without a License requires that the charge allege that the specified action was done intentionally, knowingly, or recklessly.

Therefore, the District Court's April 13, 2012 Judgment and Notice of Entry of Judgment is affirmed in part and vacated

in part. Ui's conviction for Driving Under the Influence of an Intoxicant, in violation of HRS § 291E-61(a)(4), is affirmed. Ui's conviction for violating HRS § 286-102(b) is vacated and the case is remanded to the District Court with instructions to dismiss the charge of Driving Without a License, without prejudice.

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

On the briefs:

Steven T. Barta,
for Defendant-Appellant.

Presiding Judge

Dale Yamada Ross,
Deputy Prosecuting Attorney,
County of Hawaii,
for Plaintiff-Appellee.

Associate Judge

Associate Judge