

NO. 23362

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

DANG VAN TRAN, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 1P699-00254)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Ramil, JJ.;
and Acoba, J., Concurring Separately)

Defendant-appellant Dang Van Tran appeals from (1) an order entered on February 1, 2000 by the District Court of the First Circuit, the Honorable Philip Doi presiding, denying Tran's motion to suppress his oral statement as evidence and (2) the subsequent judgment of conviction and sentence entered on March 2, 2000 for violating Hawai'i Administrative Rules (HAR) § 13-75-12(a)(2).¹ On appeal, Tran argues the trial court erred

¹ HAR § 13-75-12, Gill nets, states:

- (a) It is unlawful for any person engaged in gill net fishing to:
- (1) Leave the person's net unattended without visually inspecting the net every two hours and releasing or removing any undersized, illegal or unwanted catch; or,
 - (2) Leave the net in the water for a period of more than four hours in any twenty-four hour period.

by (1) denying his motion to suppress his oral statement as evidence because he was under custodial interrogation without the benefit of his Miranda rights and (2) ruling, as a matter of law, that HAR § 13-75-12(a)(2) was not unconstitutionally vague.

Upon carefully reviewing 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 hold that the trial court properly denied Tran's motion to suppress the oral statement as evidence because: (1) Tran was lawfully subjected to a temporary detention, which was reasonable in order for the Department of Land and Natural Resources Division of Conservation and Resource Enforcement (DOCARE) to investigate a complaint; (2) DOCARE Officer Michael Lapilio's question to Tran as to whether he knew the four-hour rule was general, brief, and non-coercive; and, (3) based on the totality of the circumstances, Tran failed to establish he was "in custody" to trigger Miranda warnings. Tran's oral statement was, therefore, properly admitted into evidence. See State v. Ketchum, 97 Hawai'i 107, 34 P.3d 1006 (2001) (citations omitted) (holding that a defendant who objects to the admissibility of his or her oral statement and seeks to suppress it must establish

(b) For purposes of this section, "gill net" means a curtain like net suspended in the water with mesh openings large enough to permit only the heads of the fish to pass through, ensnaring them around the gills when they attempt to escape.

that his or her statement was a result of . . . "interrogation" that occurred while he or she was . . . "in custody" (internal quotations and citations omitted)).

We further hold that the trial court properly concluded that HAR § 13-75-12(a)(2) is not unconstitutionally vague because the plain language of the rule gives a person of ordinary intelligence a reasonable opportunity to know what act is prohibited so that he or she may act accordingly and provides explicit standards for those who enforce the statute. See Richardson v. City and County of Honolulu, 76 Hawai'i 46, 56, 868 P.2d 1193, 1203 (1994) (citations omitted); State v. Richie, 88 Hawai'i 19, 31, 960 P.2d 1227, 1239 (1998) (citations omitted). Therefore,

IT IS HEREBY ORDERED that the judgment from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, November 8, 2002.

On the briefs:

Bryan Y. Y. Ho and
Donald E. Fisher,
for defendant-appellant

Loren J. Thomas,
Deputy Prosecuting Attorney,
for plaintiff-appellee