

NO. 24548

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

GARY STEVEN DIETZMAN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(TRAFFIC NO. 5033732MO)

SUMMARY DISPOSITION ORDER

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

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, duly considering and analyzing the law relevant to the arguments and issues raised by the parties, and having heard oral argument, we hold that the district court of the first circuit (the court)¹ did not commit any plain error in rendering its decision. See Hawai'i Rules of Penal Procedure Rule 52(b) ("Plain errors or defects affecting substantial rights may be noted although they were not brought to the attention of the court."); State v. Balanza, 93 Hawai'i 279, 286, 1 P.3d 281, 288 (2000) ("We may recognize plain error when the error committed affects substantial rights of the defendant." (Internal quotation marks and citations omitted.)). Contrary to the assertions of Defendant-Appellant Gary Steven Dietzman

¹ The Honorable David L. Fong presided over this matter.

(Defendant), the court: (1) did not act as a prosecutor and advocate for Plaintiff-Appellee State of Hawai'i (the prosecution); and (2) did not err in finding Defendant guilty of speeding sixty-five-miles-per-hour in a forty-five-miles-per-hour zone. More specifically, the court's conduct in this case did not amount to "assum[ing] the role of an advocate" for the prosecution, State v. Schutter, 60 Haw. 221, 222, 588 P.2d 428, 429 (1978), insofar as the court's interruption of Defendant's questions at trial did not exhibit a lack of impartiality. Cf. State v. Silva, 78 Hawai'i 115, 120, 890 P.2d 702, 707 (App. 1995) (holding that trial court did not behave impartially in asking a witness 110 questions aimed at establishing defendant's guilt). Also, the prosecution adduced sufficient evidence to establish that the speedometer of the police vehicle driven by the officer was accurately calibrated, despite the fact that the speedometer's speed check card was not admitted in evidence, see State v. Inq, 53 Haw. 466, 467-68, 497 P.2d 575, 577 (1972) (suggesting that speed check card need not be introduced in evidence if officer testifies to its contents and defendant fails to adduce evidence bringing the accuracy of the speedometer into question), and that the speed limit signs in the area of the traffic stop were placed there by the Director of Transportation. See State v. Vallejo, 9 Haw. App. 73, 83, 823 P.2d 154, 158 (1992) ("[T]he legislative intent expressed in [HRS § 291C-31(c) (1993)] is that, if the State has proved the official nature of the traffic control device and its position approximately

conforming to law, it has established *prima facie* that the device was placed under authority of law."). Therefore,

IT IS HEREBY ORDERED that the court's August 30, 2001 judgment and sentence, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, September 11, 2002.

R. Steven Geshell for
defendant-appellant.

Daniel H. Shimizu, Deputy
Prosecuting Attorney, City
and County of Honolulu,
for plaintiff-appellee.