

***** NOT FOR PUBLICATION *****

NO. 24692

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 DISTRICT COURT OF THE FIRST CIRCUIT
(CR. NOS. 00392743, 00399562)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Dang Van Tran appeals from the judgment of the district court of the first circuit, the Honorable Fa'auuga To'oto'o presiding, filed on October 12, 2001, convicting him of and sentencing him for one count of obstructing government operations, in violation of Hawai'i Revised Statutes (HRS) § 710-1010(1)(a) (1993 & Supp. 2003), and one count of tampering with physical evidence, in violation of HRS § 710-1076(1)(a) (1993). On appeal, Tran contends that the district court erred (1) by denying his motion to suppress, inasmuch as evidence adduced at the suppression hearing established that officers of the Department of Land and Natural Resources's (DLNR) Division of Conservation and Resource Enforcement (DOCARE) improperly conducted an administrative search of his fishing vessel to investigate for evidence of a crime, in violation of his constitutional rights, (2) by convicting him of obstruction of government operations, in violation of HRS § 710-1010(1)(a), a misdemeanor, inasmuch as the Hawai'i legislature intended to limit prosecution of fishers for obstruction of a DOCARE officer

***** NOT FOR PUBLICATION *****

to HRS § 189-14 (1993 & Supp. 2003), a petty misdemeanor, and that, thus, his conviction pursuant to HRS § 710-1010(1)(a) violated this court's decision in State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977), and (3) by denying his motion to dismiss due to State's destruction of material evidence, inasmuch as a finding of bad faith was not required and the evidence was, according to Tran, exculpatory in nature.

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, we resolve Tran's appeal as follows:

(1) Tran waived his argument that the district court erred by denying his motion to suppress by stipulating into evidence, inter alia, two photographs of coral found entangled in his gill nets and three DOCARE officers' reports in their entirety, regarding the October 14, 2001 incident. The DOCARE report included a detailed account of Tran (1) refusing to comply with the DOCARE officers' requests to leave the coral in the net until the officers could inspect it, (2) physically removing the coral from the net by various means, and (3) becoming belligerent and violent with the officers as they attempted to restrain him from removing the coral from the nets and releasing it into the water. The two photographs of coral also created a record of physical evidence with which he could have tampered, such that the actual evidence was unnecessary for the district court to find Tran guilty of tampering with physical evidence.

***** NOT FOR PUBLICATION *****

(2) Tran's conviction of obstruction of government operations, pursuant to HRS § 710-1010(1)(a), a misdemeanor, rather than of interfering with an officer, pursuant to HRS § 189-14, a petty misdemeanor, does not violate this court's decision in State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977), inasmuch as a violation of HRS § 189-14 does not "invariably and necessarily" constitute a violation of HRS § 710-1010(1)(a). The violation of HRS § 189-14, requires, in relevant part to the present matter, that a person interfere with any DOCARE officer in the performance of his or her duties. On the other hand, the violation of HRS § 710-1010(1)(a) requires that a person intentionally obstruct, impair or hinder the performance of a governmental function by a public servant acting in his or her official authority by the use or threatened use of violence, force, or physical interference or obstacle. HRS § 710-1010(1)(a) also requires the additional elements of physical interference and the state of mind of intentionally obstructing, impairing, or hindering. HRS § 189-14 does not specify a state of mind; consequently the state of mind requirement is intentionally, knowingly, or recklessly. See HRS § 702-204 (1993) ("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.")

Inasmuch as a person can violate HRS § 189-14 by interfering with any DOCARE officer in the performance of his or her duties without committing the offense of obstructing

***** NOT FOR PUBLICATION *****

government operations, the Modica rule was not violated.

(3) The district court did not err by denying Tran's motion to dismiss due to State's destruction of evidence, inasmuch as (a) Tran stipulated to the reports describing in detail the evidence, and the photographs depicting the evidence with which he tampered, and (b) the prosecution was not required to prove that the physical evidence was in fact the live stony coral that was destroyed, such that the destruction of the coral was harmless even if, assuming, arguendo, it was erroneous. See HRS § 710-1076(1)(a).

Therefore, IT IS HEREBY ORDERED that the judgment and sentence of the district court from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, August 30, 2004.

On the briefs:

Bryan Y.Y. Ho, for
defendant-appellant
Dang Van Tran

Mark Yuen, deputy
prosecuting attorney, for
the plaintiff-appellee
State of Hawai'i