

NOT FOR PUBLICATION

NO. 26098

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
RICHARD ROSA, JR., Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 96-0994)

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Foley, JJ.)

Defendant-Appellant Richard Rosa, Jr. (Rosa) appeals from the Judgment filed on August 27, 2003 in the Circuit Court of the First Circuit (circuit court).<sup>1/</sup> The circuit court convicted Rosa of Fraudulent Use of a Credit Card in violation of Hawaii Revised Statutes § 708-8100(1)(b) and (2) (1993).<sup>2/</sup>

<sup>1/</sup> The Honorable Michael D. Wilson entered the Judgment.

The Honorable Reynaldo D. Gaulty presided over the hearing on Rosa's "Motion to Dismiss Charges for Violation of HRPP Rule 48, for Violation of the Right to a Speedy Trial, and for Violation of HRPP Rule 9."

<sup>2/</sup> Hawaii Revised Statutes (HRS) § 708-8100(1)(b) & (2) (1993) provides:

**§708-8100 Fraudulent use of a credit card.** (1) A person commits the offense of fraudulent use of a credit card, if with intent to defraud the issuer, or another person or organization providing money, goods, services, or anything else of value, or any other person, the person:

. . . . .

- (b) Obtains or attempts or conspires to obtain money, goods, services, or anything else of value by representing without the consent of the cardholder that the person is the holder of a specified card or by representing that the person is the holder of a card and such card has not in fact been issued[.]

. . . . .

(continued...)

On appeal, Rosa contends the circuit court erred by denying his "Motion to Dismiss Charges for Violation of [Hawai'i Rules of Penal Procedure (HRPP)] Rule 48 [(1999)], for Violation of the Right to a Speedy Trial, and for Violation of HRPP Rule 9"<sup>3/</sup> (Motion to Dismiss).

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced, the issues raised by the parties, and the

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<sup>2/</sup>(...continued)

(2) Fraudulent use of a credit card is a class C felony if the value of all money, goods, services, and other things of value obtained or attempted to be obtained exceeds \$300 in any six-month period.

<sup>3/</sup> Hawaii Rules of Penal Procedure (HRPP) Rule 48(b) (1999) provides:

**RULE 48. DISMISSAL.**

. . . . .

(b) *By court.* Except in the case of traffic offenses, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months from:

(1) the date of arrest or of filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made; or

(2) from the date of re-arrest or re-filing of the charge, in cases where an initial charge was dismissed upon motion of the defendant; or

(3) from the date of mistrial, order granting a new trial or remand, in cases where such events require a new trial.

HRPP Rule 9 provides in relevant part:

**Rule 9. Obtaining the appearance of defendant.**

. . . . .

(c) *Execution or service and return.*

. . . . .

(3) *Manner.*

(i) *Warrant.* The warrant shall be executed without unnecessary delay by the arrest of the defendant.

statutory and case law regarding the arguments and issues, we hold:

(1) The circuit court did not violate HRPP Rule 48 in denying Rosa's Motion to Dismiss the charges against him. The State exercised due diligence and made reasonable efforts to locate Rosa. State v. Jackson, 8 Haw. App. 624, 817 P.2d 130 (1991); State v. Diaz, 100 Hawai'i 210, 58 p.3d 1257 (2002); State v. Willoughby, 83 Hawai'i 496, 927 P.2d 1379 (App. 1996).

(2) The circuit court did not violate HRPP Rule 9 in denying Rosa's Motion to Dismiss the charges against him. The length of time it took for the State to serve the bench warrant on Rosa did not amount to unnecessary delay. State v. Lei, 95 Hawai'i 278, 21 P.3d 880 (2001).

Therefore,

IT IS HEREBY ORDERED that the August 27, 2003 Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 7, 2005.

On the briefs:

Edward K. Harada,  
Deputy Public Defender,  
for Defendant-Appellant.

Mangmang Qui Brown,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge