

NOT FOR PUBLICATION

NO. 26822

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
EPIFANIA AGTARAP, Defendant-Appellant

KHAMAKAHO
CLERK, INTERMEDIATE COURTS
STATE OF HAWAI'I

2006 APR 28 AM 7:49

FILED

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
LANAI DIVISION
(CASE NO. TR1: 8/17/04)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Epifania Agtarap (Agtarap) appeals from the Judgment filed in the District Court of the Second Circuit, Lanai Division (district court)^{1/} on August 20, 2004. After a bench trial, the district court convicted Agtarap of nonobedience to a police officer, in violation of Hawaii Revised Statutes (HRS) § 291C-23 (1993). The district court fined Agtarap \$150 and assessed various fees.

On appeal, Agtarap argues that the district court (1) erred in finding her guilty as charged because, absent various clearly erroneous Findings of Fact, there was insufficient evidence to support her conviction; and (2) abused its discretion

^{1/} Per diem District Court Judge Barclay E. MacDonald presided.

in denying her request to introduce the testimony of Glori^{2/} Malaqui (Malaqui).

Upon careful review of the record and the briefs submitted by the parties, we hold that:

(1) There was sufficient evidence to convict Agtarap of the offense. The district court, based on the testimony of Officer Miles, found that Agtarap's behavior showed she had willfully or knowingly failed or refused to comply with a lawful order or direction of the officer. HRS §§ 702-210 (1993) and 702-206(2) (1993); State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999); Hawai'i Rules of Penal Procedure (HRPP) Rule 23.

(2) Although the district court's finding that Agtarap first saw Officer Miles at 11 a.m. was clearly erroneous, the error was harmless. HRPP Rule 52(a).

(3) The district court did not abuse its discretion by denying Agtarap's request to introduce the testimony of Malaqui pursuant to Hawaii Rules of Evidence (HRE) Rule 404(b) (Supp. 2005). Under HRE Rule 404(b), such evidence should not have been permitted, as it was being introduced to show action in conformity therewith -- i.e., that Officer Miles tended to fail

^{2/} Ms. Malaqui's first name is set forth as "Glori" in the opening brief, "Lori" in the August 17, 2004 trial transcript, and "Glory" in the subpoena issued to her and in the answering brief.

to instruct people he had pulled over to remain next to their cars and, given such, probably had failed to so instruct Agtarap in the instant case.

(3) It was not wrong for the district court to find that Malaqui's testimony was irrelevant. The alleged failure of Officer Miles to tell another woman in a subsequent incident to stay next to her car after he had pulled the woman over did not make it more probable that he had failed to tell Agtarap to stay near her car after he had pulled her over in the driveway of her home; allowed her to enter her house to drop off some groceries; and, when Agtarap failed to come back out, knocked on the door of her house to get her to come out and get paperwork out of her vehicle. State v. Arakawa, 101 Hawai'i 26, 32, 61 P.3d 537, 543 (App. 2002).

(4) Although the district court's findings that "[t]here were only two vehicles on the road" and that Officer Miles's vehicle "was the only other vehicle around" were vague, the findings were not clearly erroneous as there was substantial evidence in the testimony of Officer Miles to support them. State v. Eastman, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996).

Therefore,

NOT FOR PUBLICATION

IT IS HEREBY ORDERED that the Judgment filed in the District Court of the Second Circuit, Lanai Division, on August 20, 2004 is affirmed.

DATED: Honolulu, Hawai'i, April 28, 2006.

On the briefs:

John M. Tonaki,
Deputy Public Defender,
for Defendant-Appellant.

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Acting Chief Judge


Associate Judge


Associate Judge