

NO. 27831

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

STATE OF HAWAI'I, Plaintiff-Appellant, v.
CHANDLER A. O. ROSA, Defendant-Appellee

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STATE OF HAWAI'I

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 05-1-1596)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Plaintiff-Appellant the State of Hawai'i (the State) appeals from the Order Denying State's Motion to Continue Trial Week and Order Granting Defendant's Oral Motion to Dismiss with Prejudice filed on March 2, 2006 in the Circuit Court of the First Circuit (circuit court).^{1/}

On August 2, 2005, the State charged Defendant-Appellee Chandler A. O. Rosa (Rosa) via a Complaint with Unauthorized Control of Propelled Vehicle, in violation of Hawaii Revised Statutes (HRS) § 708-836 (Supp. 2006) (Count I); Lights for Motor Vehicles, Motorcycles, Motor Scooters, and Motorized Bicycles, in violation of HRS § 291-25(a) (1993) (Count II); Noncompliance with Speed Limit, in violation of HRS § 291C-102(a) (Supp. 2005) (Count III); and Driving Without License, in violation of HRS § 286-102 (Supp. 2004) (Count IV).

On November 7, 2005, the State filed a Motion for Order to Allow Video Taped Depositions, requesting that a video deposition be allowed for a necessary and material witness, Junko Eguchi (Eguchi), who, at that time, was residing in Japan and

^{1/} The Honorable Dexter D. Del Rosario presided.

might not be available for trial.^{2/} At the November 16, 2005 hearing on the motion, the State informed the court that Eguchi planned to be in Honolulu from November 17 to November 20, 2005. The circuit court offered to begin trial on November 21, 2005 so Eguchi would have to extend her stay only one day to testify and suggested that the State absorb the costs to change Eguchi's flight. The State declined the court's offer and instead orally moved to continue the trial to February 6, 2006, advising the court that Eguchi had stated she would be available for trial on that date. The circuit court denied the State's motion to take Eguchi's videotaped deposition, but granted the State's oral motion to continue trial, warning the State that no further continuances would be granted based on the inability to procure Eguchi's attendance.

On January 24, 2006, the State filed another motion to continue trial until February 27, 2006 because Eguchi would not be returning to Hawai'i until February 23, 2006. Rosa filed an opposition memorandum asking the court to deny the State's motion or, alternatively, to dismiss all charges with prejudice pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 48 and "Constitutional Speedy Trial." At the February 1, 2006 hearing, the circuit court agreed with Rosa, denied the State's motion, dismissed with prejudice all charges against Rosa, and filed its order to that effect on March 2, 2006. The State filed a Notice of Appeal on March 22, 2006.

On appeal, the State argues that the circuit court abused its discretion in dismissing, with prejudice, the State's Complaint.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

^{2/} Eguchi was an American citizen and was the owner of the vehicle that was driven without authorization by Rosa.

the arguments advanced and the issues as raised by the parties, we conclude the circuit court did not abuse its discretion when it dismissed the charges against Rosa with prejudice. Eguchi's prolonged unavailability was due to the State's lack of due diligence. The State at all times knew of Eguchi's whereabouts. The issuance of a subpoena or a material witness order could have cured Eguchi's unavailability from the onset. However, the State declined such avenues and failed to execute any other reasonable means to procure Eguchi for trial. The State's inaction directly impinged Rosa's right to a speedy trial. HRPP Rule 15(g)(5); HRPP 48(b)(1); State v. Pulse, 83 Hawai'i 229, 239, 925 P.2d 797, 807 (1996); State v. Estencion, 63 Haw 264, 269, 625 P.2d 1040, 1044 (1981).

Therefore,

IT IS HEREBY ORDERED that the Order Denying State's Motion to Continue Trial Week and Order Granting Defendant's Oral Motion to Dismiss with Prejudice filed on March 2, 2006 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 6, 2007.

On the briefs:

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellant.


Presiding Judge

Alen M. K. Kaneshiro,
Deputy Public Defender,
for Defendant-Appellee.


Associate Judge


Associate Judge