

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29031

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
NARCISCO BILLIANOR, JR., Defendant-AppellantAPPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
LAHAINA DIVISION
(CASE NO. 2P407-00373)SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Narcisco Billianor, Jr. (Billianor) appeals from the Judgment of conviction for Obstructing Access to Public Property, in violation of Hawaii Revised Statutes (HRS) § 115-9(a) (Supp. 2008), filed on January 28, 2008 in the District Court of the Second Circuit, Lahaina Division (district court).¹

The issue is a pathway (Pathway) that is used by the public to access Honolua Bay. While the district court concluded that Billianor did prevent members of the public from traversing a public right-of-way, the State concedes that there was no evidence that the Pathway was a public right-of-way and requests that Billianor's conviction be reversed.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, it appears the evidence was undisputed that the Pathway was the private property of Maui Land and Pineapple Company, Inc. and not a public right-of-way. HRS § 701-114(a) (1993) requires that each element of an offense be proven beyond a reasonable doubt. See also State v. Hoang, 86 Hawai'i 48, 58, 947 P.2d 360, 370 (1997). In light of

¹ The Honorable Simone C. Polak presided.

K. HAMAKADO
CLERK, APPELLATE COURTS
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the absence of any evidence that the Pathway was a public right-of-way, there was insufficient evidence to establish all of the elements of the offense charged.

Based upon our holding that there was insufficient evidence to establish the elements of the offense of Obstructing Access to Public Property, we do not reach the remaining issues raised by Billianor.

Therefore,

The Judgment of conviction for Obstructing Access to Public Property (HRS § 115-9(a)) filed on January 28, 2008 in the District Court of the Second Circuit, Lahaina Division, is reversed.

DATED: Honolulu, Hawai'i, April 21, 2009.

On the briefs:

Michelle L. Drewyer
for Defendant-Appellant.

Scott K. Hanano,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Daniel R. Foley
Presiding Judge


Craig W. Nakamura
Associate Judge


Anna O'Sullivan
Associate Judge