

NO. 29123

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
GLENN T. MEYERS, SR., Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 06-1-1208)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Glenn T. Meyers, Sr., (Meyers) appeals from the Judgment of Conviction and Sentence (Judgment) filed on February 28, 2008, in the Circuit Court of the First Circuit (circuit court).^{1/} After a jury trial, Meyers was found guilty of unauthorized control of a propelled vehicle (UCPV), in violation of Hawaii Revised Statutes (HRS) § 708-836 (Supp. 2008)^{2/} (Count II).^{3/} The circuit court sentenced Meyers to five years of incarceration to be served concurrently with Cr. No. 06-1-1457 and any other sentence he was currently serving.

^{1/} The Honorable Steven S. Alm presided.

^{2/} HRS § 708-836 (Supp. 2008) provides in relevant part:

1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

. . . .

(4) For the purposes of this section, "owner" means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the vehicle pending transfer of ownership, "owner" means the legal owner.

^{3/} Meyers was acquitted of attempted murder in the second degree that was charged in Count I.

On appeal, Meyers contends that the circuit court erred by refusing to instruct the jury on his mistake-of-fact defense to the UCPV charge. We agree, and we vacate Meyers's Judgment and remand the case for a new trial.

I.

Meyers testified during trial that he obtained consent to drive the truck at issue from "Pule," who Meyers believed was the truck's owner: "I got permission from the guy Pule, at that time who I thought he was the owner." Meyers requested a mistake-of-fact jury instruction regarding the UCPV charge. The circuit court, relying on State v. Palisbo, 93 Hawai'i 344, 3 P.3d at 510 (App. 2000), refused to give a mistake-of-fact instruction.

After the Judgment in this case was entered, the Hawai'i Supreme Court decided State v. Mainaupo, 117 Hawai'i 235, 178 P.3d 1 (2008), which clarified and distinguished Palisbo. In Mainaupo, the court held that

a defendant prosecuted under HRS § 708-836 may assert the mistake-of-fact defense with respect to the authorization element, where he claims that he mistakenly believed that the person who authorized his operation of the vehicle was the vehicle's registered owner, because such a belief would potentially negative the state of mind required to establish the authorization element of the offense.

Id. at 251, 178 P.3d at 17 (internal quotation marks and brackets omitted).

II.

Meyers argues that under Mainaupo, the circuit court erred in refusing to give a mistake-of-fact jury instruction and that such error was not harmless. He asks that we vacate his conviction and remand for a new trial on the UCPV charge. Plaintiff-Appellee State of Hawai'i (State) agrees that Mainaupo is dispositive and concedes error. It too requests that we vacate Meyers's UCPV conviction and remand the case for a new trial.

We conclude that Mainaupo controls the decision in this case and that the State's concession of error is supported

by the record and well-founded in law. State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). We further conclude that the State presented sufficient evidence at trial to support the jury's guilty verdict on the UCPV offense. Accordingly, we vacate the February 28, 2008, Judgment of the circuit court, and we remand the case for a new trial.

DATED: Honolulu, Hawai'i, February 25, 2009.

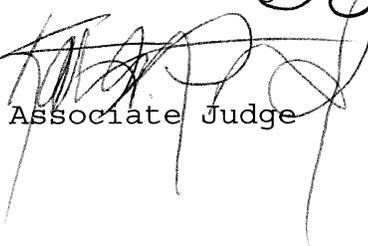
On the briefs:

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for Plaintiff-Appellee


Presiding Judge


Associate Judge


Associate Judge