

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 27219

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
LOUIS KRUSE AGARD IV, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 AUG 15 AM 9:30

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
KANEHOE DIVISION
(HPD TRAFFIC NO. 5775863MO)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Louis Kruse Agard IV (Agard) appeals from the January 21, 2005 judgment, entered in the District Court of the First Circuit,¹ convicting him of Reckless Driving, Hawaii Revised Statutes (HRS) § 291-2 (Supp. 2005).²

On July 18, 2004, after midnight on the H-3 Freeway, as Agard drove eastbound through the tunnels toward the Kahekili Highway exit, he was "lasered" by a police officer as going 80 miles per hour in a 55-mile-per-hour zone, changed lanes to pass other vehicles, turned on the Likelike Highway exit, swerved in front of the police officer's vehicle, turned on the Kahekili Highway exit, exited Kahekili Highway, ran through a stop sign, swerved into an oncoming lane, and finally stopped at a residence.

¹ Judge Michael Marr presided.

² The court fined Defendant-Appellant Louis Kruse Agard IV \$1,000 and ordered him to perform twenty hours of community service, to pay \$7 to the driver education fund, \$20 to ADF, \$25 to CICF, and to take a Driver Improvement Course.

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Although the police officer followed Agard and observed Agard exit the vehicle and enter the residence, no one inside responded to the "tapping on the window and the door" of the residence by the police officer, so the officer did not personally cite Agard at that time, but left two citations in the car that Agard had driven.

At the trial, after the court denied Agard's motion for judgment of acquittal, Agard and his friend testified that, at the relevant time, Agard was at the friend's house. The court decided the credibility issue in favor of the police officer.

On appeal, Agard argues that the State failed to prove beyond reasonable doubt that Agard drove "recklessly". HRS § 291-2 (Supp. 2005) states:

Reckless driving of vehicle or riding of animals; penalty.
Whoever operates any vehicle or rides any animal recklessly in disregard of the safety of persons or property is guilty of reckless driving of vehicle or reckless riding of an animal, as appropriate, and shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both.

HRS § 702-206 states, in relevant part:

Definitions of states of mind. . . .

(3) "Recklessly."

(a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that the person's conduct is of the specified nature.

. . . .

(d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

It appears that the evidence was sufficient to support a decision, had it been so charged, that Agard violated the

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traffic laws prohibiting the non-crime infractions of speeding, unsafe changing of lanes, and disregarding a stop sign. Was the evidence sufficient to support a decision that Agard was guilty of the misdemeanor crime of Reckless Driving? The answer is no. The State failed its burden of proving that, considering the nature and purpose of his conduct and the circumstances known to him, Agard consciously disregarded a substantial and unjustifiable risk that one or more persons would be injured and/or that property would be damaged and the disregard of this risk involved a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

Therefore, IT IS HEREBY ORDERED that the January 21, 2005 Judgment is reversed.

DATED: Honolulu, Hawai'i, August 15, 2006.

On the briefs:

Deborah L. Kim,
Deputy Public Defender
for Defendant-Appellant.

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge