

NO. 24446

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

SABINA MAUD WENNER, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(TRAFFIC NO. 5135418MO)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Ramil, JJ.,
and Acoba, J., concurring)

Defendant-appellant Sabina Maud Wenner, pro se, appeals from the district court of the first circuit's July 24, 2001 judgment and sentence for speeding, in violation of Hawai'i Revised Statutes (HRS) § 291C-102. Notice of appeal was timely filed on July 25, 2001. On appeal, Wenner argues that the district court, the Honorable Leslie Hayashi presiding, "erred in the application of the lesser of evils defense."

Upon carefully reviewing the record and the briefs submitted by both parties and having given due consideration to the arguments advanced and the issues raised, we hold that the "choice of evils" defense, HRS § 703-302 (1993), was unavailable to Wenner in this case because a dog is not included within the meaning of "another" under HRS § 701-118(8). See State v. LeVasseur, 1 Haw. App. 19, 613 P.2d 1328 (1980) (holding that the "choice of evils" defense was not available to the defendant because a dolphin is not included within the meaning of "another"

under HRS § 701-118(8)); HRS § 701-118(8) (Supp. 2001) (defining "another" as "any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions[.]"). Furthermore, any argument that "another" could refer to the dog's owner is without merit. We note that even if the argument were considered meritorious, however, the evidence adduced at trial fails to establish the required imminent harm to satisfy the choice of evils defense. Therefore,

IT IS HEREBY ORDERED that the district court of the first circuit's July 24, 2001 judgment and sentence are affirmed.

DATED: Honolulu, Hawai'i, May 31, 2002.

I concur in the result.

On the briefs:

Sabina Maud Wenner,
defendant-appellant
pro se

James M. Anderson,
Deputy Prosecuting Attorney,
for plaintiff-appellee