

*** NOT FOR PUBLICATION ***

NO. 26526

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

HRISTO TONTCHEV DIMOV, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Traffic No. 5651102MO)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Hristo Tontchev Dimov (hereinafter "Dimov") appeals from the judgment of the district court of the first circuit, the Honorable Faye M. Koyanagi presiding, entered on March 22, 2004, convicting him of and sentencing him for failure to maintain taxicab trip record, in violation of the Revised Ordinances of Honolulu ("ROH"), § 12-1.12(a).

Upon careful review of the record and the briefs submitted by the parties, the State of Hawai'i (hereinafter "the prosecution") concedes that the district court failed to comply with the Tachibana requirement of obtaining an on-the-record waiver from Dimov regarding his right to testify. See Tachibana v. State, 79 Hawai'i 226, 236, 900 P.2d 1293, 1303 (1995). We further conclude that the prosecution's confession of error is supported by the record and is well-founded in law. See State v. Wasson, 76 Hawai'i 415, 418, 879 P.2d 520, 523 (1994); Territory v. Kogami, 37 Haw. 174, 175 (1945). Therefore,

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IT IS HEREBY ORDERED that the district court's judgment of conviction is vacated and the case is remanded to the district court for retrial.

DATED: Honolulu, Hawai'i, February 15, 2005.

On the briefs:

Jon Ikenaga, deputy
public defender, for
defendant-appellant
Hristo Tontchev Dimov

Ryan Yeh, deputy
prosecuting attorney
for plaintiff-appellee
State of Hawai'i