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NO. CAAP-22-0000285

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

STATE OF HAWAI'I, Plaintiff-Appellant, v.  
CLYDE LOA, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CASE NO. 3CPC-21-0000720)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, Hiraoka and McCullen, JJ.)

Plaintiff-Appellant State of Hawai'i (**State**) appeals from the April 12, 2022 Order Granting Motion to Dismiss with Prejudice (**Order Granting Motion to Dismiss**) entered by the Circuit Court of the Third Circuit (**Circuit Court**)<sup>1</sup> in favor of the Defendant-Appellee Clyde Loa (**Loa**). The Order Granting Motion to Dismiss granted Loa's March 29, 2022 Motion to Dismiss for Defective Complaint (**Motion to Dismiss**).

On August 19, 2021, Loa was charged via Complaint with: (1) Unauthorized Control of Propelled Vehicle (**UCPV**), in violation of Hawaii Revised Statutes (**HRS**) § 708-836(1) (Supp.

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<sup>1</sup> The Honorable Robert D.S. Kim presided.

2022),<sup>2</sup> (2) Resisting an Order to Stop in the First Degree (**Resisting an Order to Stop**), in violation of HRS § 710-1026.9 (Supp. 2022),<sup>3</sup> and (3) Reckless Driving of Vehicle, in violation of HRS § 291-2 (2020).<sup>4</sup> In the Motion to Dismiss, Loa argued that the Complaint was defective because it did not conform with HRS § 805-1 (2014),<sup>5</sup> as interpreted by the Hawai'i Supreme Court

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<sup>2</sup> HRS § 708-836 provides, in pertinent part:

**§ 708-836 Unauthorized control of a propelled vehicle in the first degree.** (1) A person commits the offense of unauthorized control of a propelled vehicle in the first degree if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the propelled vehicle without the owner's consent or by changing the identity of the propelled vehicle without the owner's consent.

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(4) Unauthorized control of a propelled vehicle in the first degree is a class C felony.

<sup>3</sup> HRS § 710-1026.9 provides, in pertinent part:

**§ 710-1026.9 Resisting an order to stop a motor vehicle in the first degree.** (1) A person commits the offense of resisting an order to stop a motor vehicle in the first degree if the person:

- (a) Intentionally fails to obey a direction of a law enforcement officer, acting under color of the law enforcement officer's official authority, to stop the person's motor vehicle; and
- (b) While intentionally fleeing from or attempting to elude a law enforcement officer:
  - (i) Operates the person's motor vehicle in reckless disregard of the safety of other persons[.]

· · ·  
(2) Resisting an order to stop a motor vehicle in the first degree is a class C felony.

<sup>4</sup> HRS § 291-2 provides:

**§ 291-2 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.

<sup>5</sup> HRS § 805-1 provides:

**HRS § 805-1 Complaint; form of warrant.** When a complaint is made to any prosecuting officer of the

(continued...)

in State v. Thompson, 150 Hawai'i 262, 500 P.3d 447 (2021). The Circuit Court granted Loa's Motion to Dismiss based on Thompson and dismissed the Complaint with prejudice, pointing to the length of time Loa had been incarcerated (particularly in light of when the opinion in Thompson was released) and the obligations of the State, as well as the defense, to address jurisdictional matters.

The State raises four points of error on appeal, contending that the Circuit Court: (1) erred in its interpretation and application of the relevant statutes, particularly HRS § 805-1; (2) erred when it disregarded the effect of the preliminary hearing and probable cause determination; (3) erred in its application of Thompson to this case; and (4) abused its discretion in dismissing the Complaint with prejudice.

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<sup>5</sup>(...continued)

commission of any offense, the prosecuting officer shall examine the complainant, shall reduce the substance of the complaint to writing, and shall cause the complaint to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer, or the complaint shall be made by declaration in accordance with the rules of court. If the original complaint results from the issuance of a traffic summons or a citation in lieu of an arrest pursuant to section 803-6, by a police officer, the oath may be administered by any police officer whose name has been submitted to the prosecuting officer and who has been designated by the chief of police to administer the oath, or the complaint may be submitted by declaration in accordance with the rules of court. Upon presentation of the written complaint to the judge in whose circuit the offense allegedly has been committed, the judge shall issue a warrant, reciting the complaint and requiring the sheriff, or other officer to whom it is directed, except as provided in section 805-3, to arrest the accused and to bring the accused before the judge to be dealt with according to law; and in the same warrant the judge may require the officer to summon such witnesses as are named in the warrant to appear and give evidence at the trial. The warrant may be in the form established by the usage and practice of the issuing court.

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, we resolve Loa's points of error as follows:

Loa argued to the Circuit Court that the Complaint was fatally defective under Thompson, because the Complaint was not supported by the complainant's signature, or a declaration in lieu of signature pursuant to HRS § 805-1. The Circuit Court concluded that, pursuant to Thompson, the Complaint was fatally defective, rendering the court without jurisdiction, and that the Judicial Determination of Probable Cause did not cure the Thompson defects because that document was not attached to the Complaint.

However, the supreme court clarified its holding in Thompson in State v. Mortensen-Young, 152 Hawai'i 385, 526 P.3d 362 (2023). In Mortensen-Young, the supreme court held that HRS § 805-1 applies only to criminal complaints used to obtain a penal summons or arrest warrant. Id. at 397, 526 P.3d at 374. In other cases, Hawai'i Rules of Penal Procedure (**HRPP**) Rule 7 provides the proper framework to analyze the sufficiency of complaints. Id. at 399, 526 P.3d at 376. In Mortensen-Young, the supreme court held that each of the appellees were properly charged by a complaint signed by the prosecutor, pursuant to HRPP Rule 7(d), which does not require that a "'charging instrument in a misdemeanor case be signed by anyone other than a prosecutor'" or be "'subscribed under oath or made by declaration in lieu of an affidavit by anyone.'" Id.

HRPP Rule 7(b) further provides that a felony may be prosecuted by complaint under any of three conditions, including "if with respect to that felony the district judge has found probable cause at a preliminary hearing and has committed the defendant to answer in the circuit court pursuant to Rule 5(c) of these rules." HRPP Rule 7(b)(1). In this case, after a preliminary hearing was held on August 23, 2021 and August 30, 2021, including testimony of witnesses under oath, the District Court of the Third Circuit, found probable cause for the felony offenses of UCPV and Resisting an Order to Stop existed and ordered the matter committed to the Circuit Court for jury trial.<sup>6</sup>

Here, as in Mortensen-Young, HRS § 805-1 is inapplicable because the Complaint was not used to obtain a penal summons or arrest warrant. The Complaint set forth a concise and definite statement of the essential facts, was signed by a prosecutor, and referenced the statute that Loa allegedly violated, as required by HRPP Rule 7(d). The probable cause determination required by HRPP Rule 7(b) was made. The Complaint is a charging instrument that was sufficient to initiate the subject prosecution. Therefore, we conclude that the Circuit Court erred when it dismissed the Complaint for failure to satisfy Thompson and HRS § 805-1.

In light of our conclusion that the Circuit Court erred in dismissing the Complaint, we need not address the State's

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<sup>6</sup> The Honorable Joseph P. Florendo, Jr., presided.

argument that the Circuit Court abused its discretion in dismissing the Complaint with prejudice.

Accordingly, the Circuit Court's April 12, 2022 Order Granting Motion to Dismiss is vacated, and this case is remanded to the Circuit Court for further proceedings.

DATED: Honolulu, Hawai'i, September 22, 2023.

On the briefs:

Charles E. Murray III,  
Deputy Prosecuting Attorney,  
County of Hawaii,  
for Plaintiff-Appellant.

/s/ Katherine G. Leonard  
Presiding Judge

/s/ Keith K. Hiraoka  
Associate Judge

William H. Jameson, Jr.,  
Deputy Public Defender,  
for Defendant-Appellee.

/s/ Sonja M.P. McCullen  
Associate Judge