

NO. 23063

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JANEL A. CAMARA, Defendant-Appellant

SECOND CIRCUIT COURT
(CR. NO. 99-0025(3))

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Janel Camara appeals her conviction of one count of unauthorized control of a propelled vehicle (UCPV), in violation of Hawai'i Revised Statutes (HRS) § 708-836 (1993 & Supp. 1998), one count of promoting a dangerous drug in the third degree, in violation of HRS § 712-1243(1) (1993 & Supp. 1998), and one count of prohibited acts related to drug paraphernalia, in violation of HRS § 329-43.5(a) (1993). On appeal, Camara argues that the trial court erred in: (1) improperly instructing the jury on the mistake of fact defense; (2) denying her motion to dismiss the promoting charge as a de minimis offense and her motion for a new trial; and (3) failing to cure the prosecutor's misconduct during closing arguments.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we resolve defendant-appellant's arguments as follows: 1) because the mistake of fact defense did not apply, State v. Palisbo, 93 Hawai'i 344, 3 P.3d 510 (App. 2000), the circuit court's failure to instruct the jury on the burden of proof for the mistake of fact defense was harmless; 2) because State v. Viernes, 92 Hawai'i 130, 988 P.2d 195 (1999), is distinguishable from the

present case, the circuit court did not abuse its discretion in ruling that Camara's possession of 0.001 grams of a substance containing methamphetamine was not a de minimis offense; and 3) although the prosecutor's comments on Camara's physical reactions during the trial were improper, they did not constitute misconduct which would warrant a new trial or a reversal.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, September 19, 2000.

On the briefs:

Jock M. Yamaguchi
for defendant-appellant

Richard K. Minatoya,
Deputy Prosecuting Attorney,
for plaintiff-appellee