

*** NOT FOR PUBLICATION ***

NO. 25010

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

RICKY NAKAMURA, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-1726)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Ricky Nakamura appeals from the March 20, 2002 judgment of the circuit court of the first circuit, the Honorable Wilfred K. Watanabe presiding, convicting Nakamura of unauthorized control of a propelled vehicle (UCPV), in violation of Hawai'i Revised Statutes (HRS) § 708-836 (Supp. 2000).¹ Nakamura did not dispute that he exerted unauthorized control over a stolen vehicle, but instead, claimed as an

¹ HRS § 708-836 provides:

(1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent.

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It is an affirmative defense to a prosecution under this section that the defendant:

(a) Received authorization to use the vehicle from an agent of the owner where the agent had actual or apparent authority to authorize such use; or

(b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

(4) For the purposes of this section, "owner" means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership.

(5) Unauthorized control of a propelled vehicle is a class C felony.

***** NOT FOR PUBLICATION *****

affirmative defense, that he borrowed the vehicle from a friend, whom he believed was the vehicle's owner.

On appeal, Nakamura argues that the circuit court erred by refusing to submit the following instructions to the jury:

(1) Court's Instruction Nos. 33 and 34 and Defendant's Requested Instruction No. 2 regarding the affirmative defense to UCPV, as provided in HRS § 708-836(3)(a); and (2) Defendant's Requested Supplemental Instruction Nos. 1, 2 and 3, as provided respectively in HRS § 702-207 (1993),² HRS § 702-209 (1993),³ and HRS § 702-215 (1993),⁴ all of which Nakamura claims would have absolved him from criminal liability if he intended to drive the stolen vehicle only with the owner's permission.

Upon carefully reviewing the record and the briefs

² HRS § 702-207 provides: "When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears."

³ HRS § 702-209 provides: "When a particular intent is necessary to establish an element of an offense, it is immaterial that such intent was conditional unless the condition negatives the harm or evil sought to be prevented by the law prohibiting the offense."

⁴ HRS § 702-215 provides:

In the following instances intentionally or knowingly causing a particular result shall be deemed to be established even though the actual result caused by the defendant may not have been within the defendant's intention or contemplation:

- (1) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused; or
- (2) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of the defendant's offense.

***** NOT FOR PUBLICATION *****

submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that the circuit court did not err by refusing (1) Court's Instruction Nos. 33 and 34 and Defendant's Requested Instruction No. 2, inasmuch as Nakamura failed to adduce any evidence that he "[r]eceived authorization to use the vehicle from an agent of the owner where the agent had actual or apparent authority to authorize such use,"⁵ and (2) Defendant's Requested Supplemental Instruction Nos. 1, 2, and 3, inasmuch as HRS § 708-836 clearly imposes criminal liability for UCPV under the circumstances of this case, and HRS §§ 702-207, 702-209, and 702-215 do not absolve Nakamura from criminal liability based on an alleged intention to drive the stolen vehicle only with the owner's permission. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, August 22, 2003.

On the briefs:

Stuart N. Fujioka
for defendant-appellant
Ricky Nakamura

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
for plaintiff-appellee
State of Hawai'i

⁵ Nakamura did not assert the alternative affirmative defense, as provided in HRS § 708-836(3)(b), and thus we do not address it.