

*** NOT FOR PUBLICATION ***

NO. 23159

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

FUJIKO KOBASHIGAWA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. 150552DL)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Fujiko Kobashigawa appeals from the October 24, 2003 judgment¹ of the district court of the first circuit, the Honorable Michael Marr presiding, convicting Kobashigawa of one count of strays prohibited, in violation of Revised Ordinances of Honolulu (ROH) § 7-4.2 (1990)² and fining her fifty dollars. On appeal, Kobashigawa argues that: (1) ROH §§ 7-4.2 and 7-4.9 (1990)³ violate due process because (a) ROH § 7-4.2 fails to define a crime and (b) the definition of "owner" in ROH 7-4.9 is vague and ambiguous; (2) the charges were fatally flawed because she was charged in the disjunctive rather than the conjunctive; (3) State's Exhibit No. Two was improperly admitted into evidence because it lacked the necessary evidentiary foundation; and (4) insufficient evidence existed (a) to prove ownership of the black dog, and (b) that the black dog became a

¹ On September 30, 2003, this case was temporarily remanded to the district court for entry of a written judgment of Kobashigawa's conviction.

² ROH § 7-4.2 provides that "[i]t is unlawful for any dog, whether such dog is licensed or not, to become a stray."

³ ROH § 7-4.9 provides in relevant part that "[t]he owner of a dog which has become a stray, or any other person convicted of a violation of any section or provision of this article, shall be punished by a fine not exceeding \$50.00 or by imprisonment not exceeding 30 days, or by both."

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stray on the day in question.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) ROH §§ 7-4.2 and 7-4.9 do not violate due process, see State v. Kamal, 88 Hawai'i 292, 966 P.2d 604 (1998); State v. Gaylord, 78 Hawai'i 127, 890 P.2d 1167 (1995); (2) the language in the charge provided Kobashigawa with sufficient notice of the charged offense so as to enable her to defend herself, see State v. Lemalu, 72 Haw. 130, 809 P.2d 442 (1991); State v. Jendrusch, 58 Haw. 279, 567 P.2d 1242 (1977); Territory v. Kim Ung Pil, 26 Haw. 725 (1923); (3) the district court did not abuse its discretion by receiving State's Exhibit No. Two into evidence, see Hawai'i Rules of Evidence (HRE) Rule 901; Commentary to HRE Rule 901; State v. Loa, 83 Hawai'i 335, 926 P.2d 1258 (1996); and (4) the prosecution adduced substantial evidence, based on State's Exhibit Nos. Two and Three, to support Kobashigawa's conviction, see State v. Okumura, 78 Hawai'i 383, 894 P.2d 80 (1995).

Therefore,

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

DATED: Honolulu, Hawai'i, February 26, 2004.

On the briefs:

Tracy S. Fukui,
Deputy Public Defender,
for the defendant-appellant

Alexa D.M. Fujise, Deputy
Prosecuting Attorney, and
Pamela Fong, law clerk,
for plaintiff-appellee