

NO. 23662

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
SOON JA CHOI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Cr. No. 00-045518)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe, and Foley, JJ.)

Defendant-Appellant Soon Ja Choi (Defendant) appeals from the Judgment entered by the District Court of the First Circuit (the district court) on July 20, 2000, convicting and sentencing her for prostitution, in violation of Hawaii Revised Statutes § 712-1200 (1993 & Supp. 2001), which provides as follows:

Prostitution. (1) A person commits the offense of prostitution if the person engages in, or agrees or offers to engage in, sexual conduct with another person for a fee.

(2) As used in subsection (1), "sexual conduct" means "sexual penetration," "deviate sexual intercourse," or "sexual contact," as those terms are defined in section 707-700.^[1/]

^{1/} Hawaii Revised Statutes § 707-700 (1993 & Supp. 2001) defines the terms "sexual contact" and "sexual penetration" as follows:

"Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

(continued...)

(3) Prostitution is a petty misdemeanor.

. . . .

(5) This section shall not apply to any member of a police department . . . acting in the course and scope of duties.

(Footnote added.)

We affirm.

BACKGROUND

As a result of an undercover investigation by Officer Erick Ochoco (Officer Ochoco), Defendant was arrested on February 7, 2000 for practicing cosmetology without a license on February 7, 2000; practicing massage without a license on February 7, 2000; and committing prostitution on February 4, 2000.

Prior to the commencement of trial, the district court granted Defendant's motion to dismiss the two charges arising out of the February 7, 2000 undercover investigation, on grounds that Plaintiff-Appellee State of Hawai'i (the State) had committed a discovery violation by failing to provide Defendant with a complete police report of the February 7, 2000 events that led to Defendant's arrest on those charges. However, the district court refused to dismiss the prostitution charge against Defendant

¹/₂(...continued)

"Sexual penetration" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, anilingus, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

based on the discovery violation, saying that the prostitution incident on February 4, 2002 "stands by itself."

At trial, Officer Ochoco testified that at about 4:10 p.m. on February 4, 2000, he was dropped off at the Happy Hands massage parlor on Sheridan Street with \$130 in pre-recorded United States currency. Dressed in swim shorts and a white tank top, he pushed the door buzzer, and an adult female opened the door and asked him if he had been there before. When the officer answered that he had not, she asked for a \$50 entrance fee "for relaxation." After paying the fee, Officer Ochoco was escorted into a dimly lit room about eight feet by ten feet with "[o]ne of those bigger beds in the middle of the room." The female escort then left the room, and shortly thereafter, a woman knocked on the door and introduced herself as "Ruby." Ruby was subsequently identified as Defendant.

Defendant engaged in some small talk with Officer Ochoco, asking him, among other things, whether he had been there before and whether or not he was a police officer. Defendant then instructed the officer to take his clothes off, which he did, and she wrapped a white towel around his waist, covering his genitals. Defendant then escorted the officer into a room about the size of a standard bathroom that "was equipped with a padded table, shower heads, soap, and things of that nature." Defendant asked Officer Ochoco to "lay down" on the table, and when he complied, she rinsed him off with warm water,

using the shower head, then washed and cleansed his back side, using her bare hands and the soap. The officer was nude and lying face down at this point. Defendant then rinsed him off, flipped him over, and repeated the process on his front side. After he was rinsed, the officer got off the table at Defendant's instruction, and Defendant rinsed him off with warm water, then dried him off with a towel. Defendant then escorted the officer back to the bedroom.

Once back in the bedroom, Defendant removed the towel from the officer, told him to lay on his stomach, put a dry towel across his lower back, straddled his lower back, and began massaging him for about five minutes. She then asked him what other type of service he would like. The officer initially "played dumb" and told her that he "didn't know what she was talking about." Defendant then "went ahead and made some hand gestures and motions showing [him] what -- what the other services were." Demonstrating while he explained the different motions, Officer Ochoco testified that Defendant's first motion was using her left hand in a closed fist to do a "stroking motion up and down" for about five or six inches, which he took to mean what is "commonly referred to as assisted masturbation[.]" For the second motion, Defendant used the same closed fist and stroked it towards her mouth, which was closed, which he took "to mean blow job or fellatio." For the third motion, Defendant straddled the officer's "lower back, she kinda' pressed her --

her vaginal area down against my lower back, and did some motions and sounds, which [he] took to mean sexual intercourse."

Officer Ochoco testified that he laughed and told her that she must be joking, and Defendant replied, "no joke." After the two engaged in more small talk, Defendant again asked him what kind of service he wanted. When the officer asked about the cost of the services, Defendant repeated her prior hand motions, except that after the first motion, demonstrating the assisted masturbation, she signaled "an open hand five," which the officer took to mean \$50; after the second motion, demonstrating fellatio, Defendant held up one finger, which the officer interpreted as \$100; and after the third motion, demonstrating sexual intercourse or "full service," Defendant "indicated one-five-zero, which is a common average price for what we call full service or everything within a massage parlor, which includes sexual intercourse and fellatio."

Still acting like he thought she was joking, Officer Ochoco then told her he "didn't have enough money for sex, which is what [he] wanted to do." She asked him how much money he had, and when he showed her that he only had \$80, not enough to have sex with her, "she insisted that she could give [him] a blow job." The officer rejected the offer and insisted that he wanted to have sex. Defendant then left the room, and when she came back, she took down her dress, "exposing her breasts and stuff[,] and told him to give her \$70 for "a blow

job now[,] " and then to come back later with \$80, "and then we would have sexual intercourse." When Officer Ochoco declined and steadfastly held that he wanted to have sex now, Defendant told him to take his \$80 and come back at a later date. Officer Ochoco then left. Three days later, Defendant was arrested and charged with prostitution, practicing cosmetology without a license, and practicing massage without a license.

At trial, Defendant denied offering Officer Ochoco sexual services for money. She also claimed that she did not work at Happy Hands but was only there during the lunch hour to visit her sister, who had a kidney problem. Defendant claimed that when she saw Officer Ochoco enter Happy Hands on February 4, 2000, she was interested in him because "he reminded me of my husband[.]"

The district court, Judge Russel Nagata presiding, determined that Officer Ochoco's account of the events were more credible and found Defendant guilty of prostitution.

Defendant contends on appeal that (1) the district court's decision that Defendant offered to engage in sexual conduct for a fee is not supported by substantial evidence; (2) the district court's denial of her motion to dismiss the prostitution charge was not harmless error; and (3) the district court's denial of her motion for judgment of acquittal as to the prostitution charge is not supported by the evidence.

DISCUSSION

A.

This was essentially a credibility trial, since Officer Ochoco and Defendant had such different versions of what happened at Happy Hands on February 4, 2000. Based on our review of the record on appeal, especially the relevant testimony quoted above, we conclude that there was clearly substantial evidence that Defendant offered to engage in sexual conduct with Officer Ochoco for a fee, sufficient to support the prostitution charge. Hence, the district court did not err in denying Defendant's motion for judgment of acquittal as to the prostitution charge.

B.

At the hearing on Defendant's motion to dismiss the charges, the district court dismissed the unlicensed cosmetology and massage counts against Defendant for discovery violations because a page was apparently missing from the police report of the February 7, 2000 arrest that had been provided to Defendant. Defense counsel argued that the prostitution charge should similarly be dismissed because

the State could have and should have arrested [Defendant] on the 4th. And, to -- to not arrest on the 4th and then come back, apparently merely to stack the charges and then not present the information that surrounds that arrest, because it's not merely -- apparently what's missing is not merely the document that says -- or the paragraph that says she was arrested. It's the facts and circumstances that conclude and lead to that arrest. And, they did not relate to these supposed charges that are laid out for the 4th.

The district court then asked defense counsel whether he was "asking for more discovery or disclosure by the State[.]" Defense counsel responded to this question with "Well, . . ." then repeated his request that the court reconsider and "dismiss the charges for the 4th."

Defendant has not cited any law, and we are unaware of any that requires a defendant to be arrested on the same day that the defendant commits an offense. Moreover, Officer Ochoco testified that these types of investigations are usually continuing, and the police plan to return to the establishment being investigated several times. Accordingly, the district court did not err in holding that the State's discovery violation as to the February 7, 2000 police report did not affect the prostitution charge that arose out of the events of February 4, 2000, and the district court's denial of Defendant's motion to dismiss the prostitution charge was not error.

CONCLUSION

For the reasons discussed above, we affirm the July 20, 2000 judgment.

DATED: Honolulu, Hawai'i, April 24, 2002.

On the briefs:

Scott T. Strack for
defendant-appellant.

Mangmang Qiu Brown,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.