

NO. 23669

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DANIEL E. K. SHINYAMA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(Cr. No. 99-0457(2))

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Daniel E. K. Shinyama (Shinyama)

appeals from the June 6, 2000 Judgment of the Circuit Court of
the Second Circuit,^{1/} convicting and sentencing him for Theft in
the Second Degree, a violation of Hawaii Revised Statutes
§§ 708-830(8) (1993)^{2/} and 708-831(1)(b) (1993 & Supp. 2000).^{3/}

^{1/} Judgment was entered by Judge Shackley F. Raffetto.

^{2/} Hawaii Revised Statutes (HRS) § 708-830 (1993) provides, in
relevant part, as follows:

Theft. A person commits theft if the person does any
of the following:

. . . .

(8) Shoplifting.

(a) A person conceals or takes possession of
the goods or merchandise of any store or
retail establishment, with intent to
defraud.

^{3/} HRS § 708-831(1)(b) (1993 & Supp. 2000) provides as follows:

Theft in the second degree. (1) A person commits the
offense of theft in the second degree if the person commits
theft:

(continued...)

Shinyama contends on appeal that the intentional state of mind applies to all elements of the offense of theft in the second degree and, therefore, the circuit court plainly erred when it (1) instructed the jury that the State of Hawai'i (the State) was required to prove beyond a reasonable doubt that Shinyama "acted intentionally or knowingly with respect to the value of the property" taken from Prisca Silver Imports (emphasis added), and (2) failed to instruct the jury that the State was required to prove beyond a reasonable doubt that Shinyama acted intentionally with respect to the attendant circumstances element that the goods or merchandise be taken from "any store or retail establishment[.]"

In light of the Hawai'i Supreme Court's decision in State v. Cabrera, 90 Hawai'i 359, 978 P.2d 797 (1999), we agree

^{3/}(...continued)

. . . ;

(b) Of property or services the value of which exceeds \$300[.]

with Shinyama.^{4/} Accordingly, we vacate the June 6, 2000 Judgment and remand for a new trial.

DATED: Honolulu, Hawai'i, January 9, 2002.

On the briefs:

Rose Ann Fletcher, Deputy
Public Defender, State of
Hawai'i, for defendant-appellant.

Arleen Y. Watanabe, Deputy
Prosecuting Attorney, County
of Maui, for plaintiff-appellee.

^{4/} The State of Hawai'i (the State) points out that the phrase "intent to defraud[,]" as used in HRS § 708-830(8)(a), is defined in HRS § 708-800 (1993) as:

- (1) An intent to use deception to injure another's interest which has value; or
- (2) Knowledge by the defendant that the defendant is facilitating an injury to another's interest which has value.

The State argues that based on the foregoing definition, a "knowing" state of mind is applicable to the theft in the second degree elements. However, this court is bound by the supreme court's decision in State v. Cabrera, 90 Hawai'i 359, 978 P.2d 797 (1999).