

NOT FOR PUBLICATION

NO. 24241

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
GEORGETTE L. CRISOSTOMO, Defendant-Appellant,
and
MICHAEL D. HATORI and DOMINIC K. PEPEE, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 97-2004)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Georgette L. Crisostomo

(Crisostomo) appeals from the Judgment entered in the Circuit Court of the First Circuit¹ (circuit court) on March 22, 2001. Following a jury trial, Crisostomo was convicted of:

Count I, Promoting a Dangerous Drug in the First Degree in violation of Hawaii Revised Statutes (HRS) § 712-1241(1)(a)(i) (Supp. 2002);²

¹The Honorable Melvin K. Soong presided over jury selection and the first two days of trial; the Honorable Dexter D. Del Rosario presided over one day of trial, the jury verdict, and sentencing.

²HRS § 712-1241(1)(a)(i) (Supp. 2002) reads as follows:

§712-1241 Promoting a dangerous drug in the first degree.

(1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers[.]

NOT FOR PUBLICATION

Count II, Unlawful Use of Drug Paraphernalia in violation of HRS § 329-43.5(a) (1993);³ and

Count III, Promoting a Detrimental Drug in the Third Degree in violation of HRS § 712-1249 (1993).⁴

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Crisostomo's points of error as follows:

(1) Crisostomo contends there was insufficient evidence to support the conviction on Count I (Promoting a Dangerous Drug in the First Degree). Specifically, Crisostomo contends the record lacked substantial evidence to support a finding that (a) there was more than one ounce of methamphetamine as opposed to amphetamine in the bedroom where the police found Crisostomo (the Bedroom); (b) Crisostomo "knew the amounts of

³HRS § 329-43.5(a) (1993) reads as follows:

§329-43.5 Prohibited acts related to drug paraphernalia.

(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

⁴HRS § 712-1249 (1993) reads as follows:

§712-1249 Promoting a detrimental drug in the third degree.

(1) A person commits the offense of promoting a detrimental drug in the third degree if the person knowingly possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.

NOT FOR PUBLICATION

drug or residue in the pipe"; (c) there was a sufficient nexus between the drugs and Crisostomo; and (d) her possession was more than a de minimus violation of the statute.

(a) Honolulu Police Department drug analysis expert Hassan Mohammed's testimony was substantial evidence that the total amount of substance containing methamphetamine in State's Exhibits 1-6 weighed 28.840 grams, which is more than one ounce (approximately 28.35 grams). Considering this evidence in the strongest light for the State, we conclude there is substantial evidence to support the conclusion of the trier of fact. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998). The jury relied on substantial evidence of a "sufficient quality and probative value to enable a person of reasonable caution to support a conclusion" as to every material element of the offense charged. State v. Jenkins, 93 Hawai'i 87, 101, 997 P.2d 13, 27 (2000) (internal quotation marks and brackets omitted). The jury found the testimony of the State's witnesses credible. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." Id. (internal quotation marks and brackets omitted) (quoting State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999)).

(b) Crisostomo contends that insufficient evidence established that she knowingly possessed more than one ounce of

NOT FOR PUBLICATION

methamphetamine. The record contains substantial evidence that Crisostomo knowingly possessed the total amount of the substance containing methamphetamine contained in State's Exhibits 1-6, which weighed 28.840 grams, more than one ounce.

(c) Crisostomo contends there was an insufficient nexus between herself and the drugs found in the Bedroom.

This court has recognized that possession can be either actual or constructive. State v. Mundell, 8 Haw. App. 610, 617, 822 P.2d 23, 27-28 (1991). The State presented evidence that Crisostomo, an occupant in the Bedroom, was within a few feet from the table on which the substance containing methamphetamine and two glass pipes with methamphetamine residue were located. A third glass pipe containing white residue was located on top of the dresser. While Crisostomo was not in actual possession of the substance containing methamphetamine when the officers entered the Bedroom, the State presented substantial evidence to support the conclusion of a reasonable mind that Crisostomo "had the intent and capability to exercise control and dominion over the drugs." State v. Moniz, 92 Hawai'i 472, 476, 992 P.2d 741, 745 (2000) (internal quotation marks omitted). We conclude that a nexus between Crisostomo and the substance containing methamphetamine can be inferred.

(d) Crisostomo contends that her conviction on Count I, the "so-called possession of methamphetamine was an

NOT FOR PUBLICATION

unconstitutional application of the drug laws and de minimus violation of the conduct proscribed by statute." Crisostomo relies on State v. Viernes, 92 Hawai'i 130, 988 P.2d 195 (1999), where the Hawai'i Supreme Court applied HRS § 702-236 (1993),⁵ the de minimus statute, to a drug charge under HRS § 712-1243 (1993), Promoting a Dangerous Drug in the Third Degree, committed when a person "knowingly possesses any dangerous drug in any amount" (emphasis added). Crisostomo's reliance on Viernes is misplaced. Crisostomo was convicted of possessing a substance containing more than one ounce of methamphetamine, significantly more than the mere residue at issue in Viernes. Furthermore, Crisostomo was convicted of violating HRS § 712-1241, which does not penalize possession of any amount, but applies when a person knowingly possesses "one ounce or more." Therefore HRS § 702-236 does not apply to Crisostomo.

⁵HRS § 702-236 (1993) provides in relevant part:

§702-236 De minimis infractions. (1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

-
- (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- (c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

(2) The court shall not dismiss a prosecution under subsection (1)(c) of this section without filing a written statement of its reasons.

NOT FOR PUBLICATION

(2) Crisostomo contends the circuit court erroneously admitted correspondence from 99-902 Moanalua Road and the State of Hawai'i Department of Human Services (State's Exhibits 16 and 18) in violation of her right to a fair trial. Crisostomo's claim is without merit. The correspondence evidence was probative of whether a nexus existed between Crisostomo and the substance containing methamphetamine, including occupancy of the place where the drugs were found, right of possession of the place, and access to the Bedroom where police discovered the drugs. The circuit court⁶ admitted the evidence, stating:

I reviewed these documents and in fact I reviewed photographs or any documents related to Crisostomo to make sure that the State did not inadvertently admit any evidence that would connect this defendant to CPS [Child Protective Services], and it doesn't appear to have any documentation regarding CPS.

Regarding the correspondence from the 99-902 Moanalua Road address, the circuit court⁷ admitted it, stating:

The Court has reviewed it. It has an address. It doesn't indicate that this comes from the correctional facility. 99-902 Moanalua Road. I'm going to preclude counsel from identifying this address.

Furthermore, the evidence did not contain any indication of the contents of the correspondence. The circuit court's determination to admit the evidence of Crisostomo's correspondence cannot "fairly be considered to have exceeded the bounds of reason, or to have disregarded rules or principles of

⁶The Honorable Melvin K. Soong presided.

⁷The Honorable Melvin K. Soong presided.

NOT FOR PUBLICATION

law or practice to the substantial detriment of a party litigant." Kealoha v. County of Hawaii, 74 Haw. 308, 324, 844 P.2d 670, 678 (1993) (internal quotation marks omitted). Therefore, we conclude the circuit court did not abuse its discretion.

Therefore,

IT IS HEREBY ORDERED that the March 22, 2001 Judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, March 7, 2003.

On the briefs:

Lila Barbara Kanae
for defendant-appellant.

Acting Chief Judge

Bryan K. Sano,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge