

NO. 24301

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MITCHELL DENNIS HAMILTON, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(CR. NO. 5079683MO)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Mitchell Dennis Hamilton (Hamilton) appeals from the Judgment entered in the District Court of the First Circuit, Honolulu Division (district court), on April 24, 2001. Following a bench trial,¹ Hamilton was convicted of violating § 40-1.2(a) of the Revised Ordinances of Honolulu (ROH).² On appeal, Hamilton contends the district court erred when it (1) failed to find that Hamilton had the requisite state of mind for a ROH § 40-1.2(a) violation and (2) found there was substantial evidence that Hamilton was in possession of the can

¹The Honorable Russel S. Nagata presided.

²ROH § 40-1.2(a) provides:

Sec. 40-1.2 Prohibition in public areas--Exceptions.

- (a) No person shall drink, offer or display to public view in any public park, public playground, public school ground, public off-street parking area or any building located thereon, any intoxicating liquor, whether in a bottle, demijohn, jug, container or otherwise.

of beer. Upon careful review of the record, we disagree with Hamilton's contentions and affirm the Judgment.

Hawai'i Rules of Penal Procedure Rule 23(c) requires only that the district court make a general finding of guilt, which the district court made in this case. Hamilton's failure to request a special finding precludes Hamilton from now raising the district court's failure to make the special finding as an issue on appeal. State v. Bigelow, 2 Haw. App. 654, 638 P.2d 873, 874 (1982); see also State v. Bush, 98 Hawai'i 459, 461, 50 P.3d 428, 430 (App. 2002).

Section 40-1.2(a) of ROH prohibits drinking, offering or displaying to public view in any public area any intoxicating liquor. The district court has the discretion to weigh the credibility of the witnesses, and one credible witness's testimony can constitute substantial evidence in support of a criminal conviction. State v. Momoki, 98 Hawai'i 188, 194, 46 P.3d 1, 7 (App. 2002); State v. Ibuos, 75 Haw. 118, 123, 857 P.2d 576, 578-79 (1993).

Police Officer Bruce Law observed that the beer can was no more than a couple of inches away from Hamilton's waist, that no one else was within reach of the beer can and that, although Hamilton had been given the opportunity, Hamilton had failed to discard the beer to avoid citation. Consequently, viewing the evidence in the strongest light for the State and allowing for

reasonable inferences arising therefrom, the district court had substantial evidence from which to infer that Hamilton displayed the beer to public view in violation of the ordinance. State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996); State v. Hopkins, 60 Haw. 540, 543-44, 592 P.2d 810, 812 (1979).

Therefore, it is hereby ordered that the Judgment entered in the District Court of the First Circuit, Honolulu Division, on April 24, 2001, is affirmed.

DATED: Honolulu, Hawai'i, October 23, 2002

On the briefs:

Randall K. Hironaka,
Deputy Public Defender,
for defendant-appellant.

Acting Chief Judge

Mark Yuen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge