

**NOT FOR PUBLICATION**

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NO. 24866

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
KAREN L. EKLUND, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,  
WAILUKU DIVISION  
(CASE NO. CT3:12/19/01)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Karen L. Eklund (Eklund) appeals the Judgment filed on December 18, 2003 in the District Court of the Second Circuit, Wailuku Division<sup>1</sup> (district court).

The complaint against Eklund charged

[t]hat on or about the 17th day of October, 2000, in the Division of Wailuku, County of Maui, State of Hawaii, KAREN L. EKLUND, with intent to defraud, did conceal or take possession of the goods or merchandise of Longs Drug Store, a store or retail establishment, to wit, several wallets and picture frames, the value of which property did not exceed One Hundred Dollars (\$100.00), thereby committing the offense of Theft in the Fourth Degree by Shoplifting, in

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<sup>1</sup>The Honorable Douglas H. Ige presided.

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violation of Sections 708-830(8) [(1993)<sup>2</sup>] and 708-833(1) [(1993)<sup>3</sup>] of the Hawaii Revised Statutes.

Eklund was convicted as charged. On appeal she argues that (1) the district court erred by not using the "beyond a reasonable doubt" standard of proof and impermissibly shifting the burden of proof to her when it convicted her of Theft in the Fourth Degree and (2) there was insufficient evidence to prove she intended to defraud Longs Drug Store.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

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<sup>2</sup>Hawaii Revised Statutes (HRS) § 708-830 (1993) provides in relevant part as follows:

**§708-830 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.
  - (b) A person alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.
  - (c) A person transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud.

The unaltered price or name tag or other marking on goods or merchandise, or duly identified photographs thereof, shall be prima facie evidence of value and ownership of such goods or merchandise. Photographs of the goods or merchandise involved, duly identified in writing by the arresting police officer as accurately representing such goods or merchandise, shall be deemed competent evidence of the goods or merchandise involved and shall be admissible in any proceedings, hearings, and trials for shoplifting, to the same extent as the goods or merchandise themselves.

<sup>3</sup>HRS § 708-833 (1993) provides as follows:

- §708-833 Theft in the fourth degree.** (1) A person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of \$100.
- (2) Theft in the fourth degree is a petty misdemeanor.

the arguments advanced and the issues raised by the parties, we resolve Eklund's points of error as follows:

(1) The record reveals that the district court expressly referred to and applied the "beyond a reasonable doubt" standard in determining whether Eklund was guilty of Theft in the Fourth Degree. Any statements by the district court regarding the lack of evidence to support Eklund's version of the facts were made in the context of the district court's assessment of Eklund's credibility, and the supreme court has instructed that "[w]e must give due deference to [the trial court's] ability to separate a determination of credibility and weighing of the evidence from the application of the proper standard of proof--beyond a reasonable doubt." State v. Aplaca, 74 Haw. 54, 65, 837 P.2d 1289, 1304-05 (1992).

(2) There was substantial evidence to prove Eklund's intent to defraud Longs Drug Store and to convict Eklund of Theft in the Fourth Degree. A Longs Drug Store employee testified that he saw Eklund place items into a brown paper bag and walk out of the store without paying for the items. The employee also testified that he stopped Eklund fifteen feet from the exit and arrested her for shoplifting. There was thus substantial evidence to show Eklund took and did not intend to return the items, thereby showing her intent to defraud Longs Drug Store.

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Therefore,

IT IS HEREBY ORDERED that the Judgment filed on December 18, 2003 in the District Court of the Second District, Wailuku Division, is affirmed.

DATED: Honolulu, Hawai'i, January 29, 2004.

On the briefs:

Mitsuhiro Murakawa,  
Deputy Public Defender,  
for defendant-appellant.

Chief Judge

Simone C. Polak,  
Deputy Prosecuting Attorney,  
County of Maui,  
for plaintiff-appellee.

Associate Judge

Associate Judge