

NO. 26008

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROXSAND MITCHELL, also known as Roxsands
Mithcell, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-2727)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Roxsands Mitchell, also known as Roxsands Mithcell, (Mitchell) appeals from the Judgment filed on July 2, 2003 in the Circuit Court of the First Circuit (circuit court).¹ Mitchell was convicted of Promoting Prison Contraband in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 710-1023(1)(b) (1993 & Supp. 2004).

On appeal, Mitchell contends the circuit court (1) erred by denying her motions for judgment of acquittal; (2) violated her constitutional right to an unanimous verdict because the court failed to give a specific unanimity instruction; and (3) committed plain error by neglecting to instruct the jury on the state of mind necessary to establish a violation of the drug paraphernalia statute.

¹The Honorable Richard K. Perkins presided.

Upon careful review of the record and the briefs submitted by the parties, we hold:

(1) The circuit court did not err in denying Mitchell's motions for judgment of acquittal because viewing the evidence in the light most favorable to the State and "in full recognition of the province of the trier of fact, the evidence [was] sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt." State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996);

(2) The circuit court did not violate her constitutional right to an unanimous verdict by failing to give a specific unanimity instruction. The only statute, rule, or order submitted for the jury's consideration by the State was the prison rule against bringing anything into the prison without prior written authorization. Since the State elected the attendant circumstance, the circuit court was not required to provide a specific unanimity instruction. State v. Tanaka, 92 Hawai'i 675, 677, 994 P.2d 607, 609 (App. 1999); and

(3) The circuit court did not commit plain error because it was not "necessary in order for the jury to have a clear and correct understanding of what it [was] that they [were] to decide" for the circuit court to instruct the jury on the

state of mind necessary under the paraphernalia statute. State v. Vanstory, 91 Hawai'i 33, 42, 979 P.2d 1059, 1068 (1999).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on July 2, 2003 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 20, 2005.

On the briefs:

Mary Ann Barnard
for defendant-appellant.

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

Acting Chief Judge

Associate Judge

Associate Judge