

NOT FOR PUBLICATION

CONCURRING AND DISSENTING OPINION BY LIM, J.

I believe there was sufficient evidence adduced at trial to support Defendant's conviction of the September 20, 2001 criminal property damage charge. The absence of the videotape from the evidence notwithstanding, (1) there was Sue Alana's testimony that she found a rock in the bed of her husband's truck and observed corresponding damage to the truck; (2) there was Defendant's admission that the videotape showed him throwing an object, albeit in a direction away from the truck; and (3) there was abundant evidence of the animus between the neighbors and Defendant's *modus operandi*. Hence, taking the evidence in the light most favorable to the State, and having due regard for the prerogative of the trier of fact to believe or disbelieve any witness -- including Defendant -- in whole or in part, there was substantial evidence that Defendant intentionally threw a rock at the truck and damaged it. State v. Aki, 102 Hawai'i 457, 460, 77 P.3d 948, 951 (App. 2003).

Under the proper standard of review, supra, it matters not that Defendant's self-serving statement about the direction of his throw escaped rebuttal by the State, for the district court could not be bound by that particular state of the evidence. We, however, are bound by the district court's evaluation of that evidence. Aki, 102 Hawai'i at 460, 77 P.3d at 951. I therefore respectfully dissent from the majority's reasoning and order reversing Defendant's conviction

NOT FOR PUBLICATION

of the September 20, 2001 criminal property damage charge.

I otherwise agree with the majority's reasoning and disposition.

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal line and a small flourish.

Associate Judge