

NOT FOR PUBLICATION

NO. 26237

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ZENNA QUIOCHO, Defendant-Appellant, and
ROKEUAINA LETUA, Defendant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-1178)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Zenna Quiocho (Quiocho) appeals from the October 28, 2003 Judgment entered in the Circuit Court of First Circuit,^{1/} finding her guilty of Robbery in the Second Degree, Hawaii Revised Statutes (HRS) § 708-841(1) (a) (1993),^{2/} and sentencing her to incarceration for a maximum of ten years and a minimum of three years and four months. Pursuant to HRS § 706-606 and 706-668.5 (1993), the judgment ordered this sentence to be served consecutive to the sentences that were previously imposed in Cr. No. 02-1-0531.^{3/}

^{1/} The Honorable Marie N. Milks presided.

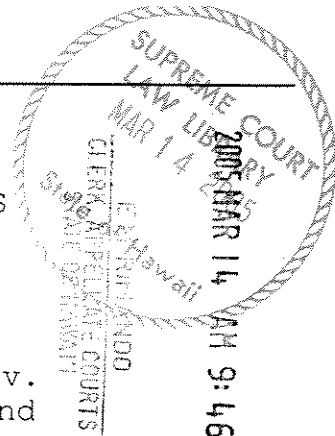
^{2/} Hawaii Revised Statutes § 708-841 (1993) states, in relevant part, as follows:

Robbery in the second degree. (1) A person commits the offense of robbery in the second degree if, in the course of committing theft:

(a) The person uses force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance;

(2) Robbery in the second degree is a class B felony.

^{3/} At the sentencing on October 28, 2003, the court noted that "[i]n 02-1-531, [Defendant-Appellant Zenna Quiocho] had [an] arrest and convictions for forgery, fraudulent use of credit card, theft in the second degree, and forgery in the second degree."



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The May 30, 2003 Complaint charged Quiocho and co-defendant Rokeuaina Letua (Letua) with Robbery in the Second Degree. Specifically, it charged Quiocho as follows:

COUNT II: On or about the 20th day of May, 2003 in the City and County of Honolulu, State of Hawaii, ZENNA QUIOCHO, while in the course of committing a theft from Longs Drug Stores California, Inc., did use force against Janice Kapahua, a person who was present, with the intent to overcome that person's physical resistance or physical power of resistance, thereby committing the offense of Robbery in the Second Degree, in violation of Section 708-841(1)(a) of the Hawaii Revised Statutes.

During the trial, on direct examination by his counsel, Letua testified, in relevant part, as follows:

Q. Mr. Letua, were you at Longs Drugstore Pearlridge on May 20th, 2003?

A. Yes.

Q. Why were you there?

A. To get a present for my mother-in-law.

Q. And who were you with?

A. My youngest son . . . and my fiancée [Quiocho].

Q. Did you want to be there that morning?

A. No.

Q. Why not?

A. Because I didn't have enough sleep. And she was rushing us to go there. And she still had to go work, and I had to be home for the kids, and my kids don't get out [of] school till 2:15. And then she don't get off work till 6:00, and I'll be up all that time and I wouldn't have sleep, so I was pretty upset that day.

Q. Okay. What happened when you were there?

A. Well, we went to Longs and we got some macadamia nuts -- and I was still upset -- and I got two and put it in the stroller. And I just wanted to get out of there.

On August 14, 2003, a jury found Quiocho and Letua guilty as charged. On September 18, 2003, the State of Hawai'i (the State) filed a Motion for Consecutive Term Sentencing and a

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Motion for Sentencing of Repeat Offender. On October 28, 2003, the court orally sentenced Quiococho then entered the judgment. The notice of appeal was timely filed on November 24, 2003. This appeal was assigned to this court on August 24, 2004.

Quiococho's five points of error are as follows:

- A. The Court Abused its Discretion in Restricting Quiococho's Cross Examination of Letua.

The court did not restrict Quiococho's cross-examination of Letua. The court restricted Quiococho's recross-examination of Letua because, in the court's view, it was not within the scope of the redirect examination of Letua.

On cross-examination by the prosecutor, Letua testified, in relevant part, as follows:

Q. You and [Quiococho] agreed to get [Quiococho's] mom macadamia nuts for her birthday that day, correct?

A. Yeah. Yes, yes.

Q. From Longs Pearlridge, correct?

A. Yes.

Q. And the nuts you put under your son's stroller, you were going to take and give to [Quiococho's] mom for her birthday, correct?

A. No.

On redirect examination, Letua testified, in relevant part, as follows:

Q. Mr. Letua, to that last question of the prosecutor, she said that you were going to take the macadamia nuts and she said and give it to your mother-in-law and you said no. Do you want to --

A. Well, no, because I was just angry and I left the store with it. It's not like I was gonna give it to my mother-in-law, you know.

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On recross-examination by counsel for Quiocho, the following was stated, in relevant part:

Q. Mr. Letua, in question by the -- by the state, . . . you indicated that there was an agreement to get macadamia nuts for your mother-in-law that day?

A. Uh-huh.

. . . .

THE COURT: Counsel, go within the redirect, please. That was on cross. You must go within the redirect of [counsel for Letua's] question. Thank you. This is recross. Recross must be within the scope of redirect[.]

In light of the record, the court did not err. Assuming the court erred, its error was harmless beyond a reasonable doubt.

B. There was Insufficient Evidence to Support the Finding that Quiocho Used Force With Intent to Compel the Person's Physical Resistance or Physical Power of Resistance.

This point is contradicted by the record.

C. There was Insufficient Evidence to Support the Finding that Quiocho was an Accomplice to Letua's Use of Force.

This point is contradicted by the record.

D. Quiocho was Denied Effective Assistance of Counsel for Trial Counsel's Failure to Challenge The Court's Reliance on Quiocho's Prior Convictions Without the Establishment Quiocho was Represented by Counsel for Said Convictions.

E. The Court Abused its Discretion in Sentencing Quiocho to Consecutive Terms of Imprisonment Without Establishing the Court's Reliance on Prior Convictions were With Quiocho Having the Benefit of Counsel.

These two points are contradicted by the record. The record supports the following statement by the State in its answering brief:

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[T]he court did not consider [Quiocho's] prior misdemeanor and petty misdemeanor offenses or convictions in sentencing [Quiocho] to consecutive terms of imprisonment. The court did, however, consider [Quiocho's] convictions in Criminal No. 02-1-0531 in imposing said sentence, but first determined that those convictions were counseled.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the argument and issues raised by the parties,

IT IS HEREBY ORDERED that the October 28, 2003 Judgment is affirmed.

DATED: Honolulu, Hawai'i, March 14, 2005.

Keith S. Agena
(Char Sakamoto Ishii Lum & Ching)
(Randal I. Shintani on the brief)
for Defendant-Appellant


Chief Judge

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee


Associate Judge


Associate Judge