

NO. 27144

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
CHARLES A. STANLEY, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-0049)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Charles A. Stanley (Stanley) appeals from the Judgment filed on February 24, 2005 in Circuit Court of the First Circuit (circuit court).^{1/}

On January 7, 2004 the State of Hawaii (the State) charged Stanley via a Complaint with one count of Robbery in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(a) (1993). The Complaint alleged that on or about December 31, 2003, Stanley, while in the course of committing a theft from Sears Roebuck and Company (Sears or store) in Honolulu, Hawaii, did use force against Jennifer Genck (Genck) and/or Scott Goodwin (Goodwin) with intent to overcome that person's physical resistance or physical power of resistance.

^{1/} The Honorable Lono J. Lee presided.

FILED
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 OCT 24 AM 9:01

FILED

On October 6, 2004, the jury returned a guilty verdict.^{2/} On January 25, 2005, the State filed a Motion for Sentencing of Repeat Offender. On February 24, 2005, the circuit court sentenced Stanley to a term of imprisonment of ten years, granted the State's motion to sentence Stanley as a repeat offender, set Stanley's minimum term of imprisonment at three years and four months, and entered its Judgment. Stanley filed an appeal on February 25, 2005.

On appeal, Stanley argues that the circuit court erred by (1) denying his October 5, 2004 two oral motions for judgment of acquittal, (2) allowing a juror to remain on the jury, (3) denying his Motion to Dismiss, and (4) finding that he qualified as a repeat offender for purposes of HRS § 706-606.5 (1993 & Supp. 2005).

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude:

(1) Substantial and convincing evidence that Stanley used force in committing the crime charged was adduced at trial. Therefore, the circuit court properly denied his oral motions for

^{2/} The jury concluded that Stanley did use force against Scott Goodwin, but not against Jennifer Genck.

judgment of acquittal. State v. Meyers, Nos. 26574, 26580 & 26586, 2006 WL 2398718, at *7 (Hawaii App. Aug. 17, 2006); State v. Gaston, 108 Hawaii 308, 311, 119 P.3d 616, 619 (App. 2005); State v. Naeole, 62 Haw. 563, 565, 617 P.2d 820, 823 (1980); State v. Balberdi, 90 Hawaii 16, 21, 975 P.2d 773, 778 (App. 1999); see State v. Topasna, 94 Hawaii 444, 461, 16 P.3d 849, 866 (App. 2000); State v. Lioen, 106 Hawaii 123, 130, 102 P.3d 367, 374 (App. 2004); State v. Barros, 105 Hawaii 160, 170, 95 P.3d 14, 24 (App. 2004).

(2) The circuit court did not commit plain error in allowing Presas to remain on the jury. State v. Williamson, 72 Haw. 97, 102, 807 P.2d 593, 596 (1991); State v. Furutani, 76 Hawaii 172, 179, 873 P.2d 51, 58 (1994).

(3) Genck and Goodwin conducted a purely private search and seizure of Stanley and therefore are not subject to the proscription of the Fourth Amendment. State v. Sanford, 97 Hawaii 247, 35 P.3d 764 (2001).

(4) The circuit court properly sentenced Stanley to a mandatory minimum term of imprisonment of three years and four months as a repeat offender. HRS § 706-606.5; HRS § 708-841(2) (1993); 21 U.S.C. 841(a)(1); 21 U.S.C. 841(b)(1)(C).

Therefore,

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

The Judgment filed on February 24, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 24, 2006.

On the briefs:

Shawn A. Luiz
for Defendant-Appellant.

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge