

NO. 26808

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
LORRAINE NIVERAS MONICO, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 03-1-0813)

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STATE OF HAWAII

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SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Nakamura and Fujise, JJ.)

Lorraine Niveras Monico (Monico) appeals from the August 11, 2004 adverse judgment and sentence entered by the Circuit Court of the First Circuit (circuit court).<sup>1</sup> On April 16, 2003, Monico was charged by grand jury indictment with the fraudulent receipt of \$66,516.00 in public benefits between July, 1998 and October, 2002. On June 3, 2004, Monico was found guilty by a jury of Theft in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 708-830.5(1)(a) (1993),<sup>2</sup> and HRS § 708-830(2) (1993).<sup>3</sup>

Upon careful review of the record and the briefs

<sup>1</sup> The Honorable Michael A. Town presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 708-830.5(1)(a) (1993) states:

(1) A person commits the offense of theft in the first degree if the person commits theft:

(a) Of property or services, the value of which exceeds \$20,000[.]

<sup>3</sup> In relevant part, HRS § 708-830(2) (1993) states:

A person commits theft if the person does any of the following:

.....

(2) Property obtained or control exerted through deception. A person obtains, or exerts control over, the property of another by deception with intent to deprive the other of the property.

submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we dispose of Monico's points of error on appeal as follows:

1. After giving "full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact[,] " we conclude that the evidence adduced at trial was credible evidence of sufficient quality and probative value to support the jury's unanimous verdict finding Monico guilty of Theft in the First Degree. See State v. Grace, 107 Hawai'i 133, 139, 111 P.3d 28, 34 (App.), cert. denied, 107 Hawai'i 348, 113 P.3d 799 (2005), (block quote format changed) (quoting State v. Ferrer, 95 Hawai'i 409, 422, 23 P.3d 744, 757 (App. 2001)); see also State v. Batson, 73 Haw. 236, 248, 831 P.3d 924, 931 (1992).

2. On review of the record in this case, the circuit court did not "clearly exceed[] the bounds of reason or disregard[] rules or principles of law or practice to the substantial detriment" of Monico (see State v. Gaylord, 78 Hawai'i 127, 144, 890 P.2d 1167, 1184 (1995)) and thus did not abuse its discretion by admitting Glen Murray's (Murray) employment documents.

3. The circuit court did not violate Monico's federal or state constitutional right to confrontation by admitting these same documents. Here, Monico did not have an opportunity to cross-examine Murray, nor did the State make any effort to produce Murray as a witness. However, neither matters where the statements in the records provided by Murray were not "testimonial" in nature. The record reveals nothing about these statements that would lead either Murray or an "objective witness" to reasonably believe that they "would be available for use at a later trial." State v. Grace, 107 Hawai'i 133 at 143, 111 P.3d 28 at 38 (App. 2005); see also Crawford v. Washington, 541 U.S. 36, 51 (2004). Therefore, we conclude that they were

not testimonial and find no violation of Monico's federal or state right to confrontation.

4. Finally, we conclude that the Deputy Prosecuting Attorney's use on several occasions during closing argument of the phrase "the State believes," and the comment, "we see in the Department of Human Services[,] while improper, were harmless and did not warrant a new trial in light of the circuit court's repeated admonitions and instructions to the jury to disregard them, as well as the ample evidence supporting Monico's guilt. See State v. Agrabante, 73 Haw. 179, 198-99, 830 P.2d 492, 502-03 (1992).

Therefore,

IT IS HEREBY ORDERED that the August 11, 2004 Judgment of Conviction and Sentence of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 31, 2007.

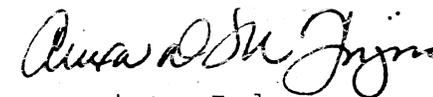
On the briefs:

Keith S. Shigetomi,  
for Defendant-Appellant.

Dorothy D. Sellers,  
Solicitor General, and  
Deirdre Marie-Iha,  
Deputy Solicitor General,  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge