

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27599

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ALBERTA K. SOUZA, Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2007 JAN 24 AM 10: 14

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-1183)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Alberta K. Souza (Souza) appeals from the Judgment of Conviction and Probation filed on November 9, 2005 in the Circuit Court of the First Circuit (circuit court).^{1/} On June 16, 2004, the State of Hawaii (the State) charged Souza via an Indictment with three counts of Prohibiting Fixing of Tickets, in violation of Hawaii Revised Statutes (HRS) § 286-138(a) (1993 & Supp. 2005). The indictment alleged that Souza, on three separate occasions (on or about December 16, 2002 (Count I), December 23, 2002 (Count II), and October 25, 2002 (Count III)), did intentionally and/or knowingly fix, void, change, modify, adjust, tamper with, and/or otherwise dispose of any traffic citation, notice and/or summons.

On July 29, 2005, the jury returned guilty verdicts as to Counts II and III, but could not reach a unanimous verdict as to Count I. The circuit court declared a mistrial as to Count I.

^{1/} The Honorable Dexter D. Del Rosario presided.

On August 9, 2005, Souza filed a Motion for Judgment of Acquittal, essentially arguing that the State had failed to prove beyond a reasonable doubt that Souza intentionally or knowingly did the crimes charged. After a hearing, the circuit court issued its Findings of Fact, Conclusions of Law, and Order Denying Defendant's Motion for Judgment of Acquittal on September 14, 2005 and its judgment on November 9, 2006. Souza timely appealed.

On appeal, Souza argues that the circuit court (1) erred in denying her post-verdict Motion for Judgment of Acquittal on the basis that the evidence adduced at trial was insufficient to place the burden of proof upon the State to prove beyond a reasonable doubt that Souza was not ignorant or mistaken as to a fact that negates the state of mind required to establish an element of the charged offense, and (2) committed plain error when it failed to instruct the jury that the burden was upon the State to prove beyond a reasonable doubt that Souza was not ignorant or mistaken as to a fact that negated the state of mind required to establish an element of the charged offenses.

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 that:

(1) There was substantial evidence to convict Souza on Counts II and III. The lower court record contains evidence to have enabled the jury to conclude beyond a reasonable doubt that Souza intentionally and knowingly fixed the tickets of Nora Wilson and Kaipō Bellefeuille. State v. Okuda, 71 Haw. 434, 446-47, 795 P.2d 1, 8 (1990); State v. Rushing, 62 Haw. 102, 106, 612 P.2d 103, 106 (1980); State v. Wilkins, 1 Haw. App. 546, 552, 622 P.2d 620, 624 (1981); State v. Silva, 67 Haw. 581, 587, 698 P.2d 293, 297 (1985); State v. Stuart, 51 Haw. 656, 657, 466 P.2d 444, 445 (1970); State v. Sadino, 64 Haw. 427, 429, 642 P.2d 534, 536-37 (1982); State v. Moleta, 112 Hawai'i 233, 239-40, 145 P.3d 776, 782-83 (App. 2006); State v. Batson, 73 Haw. 236, 254, 831 P.2d 924, 934 (1992).

(2) The circuit court was not required to instruct the jury on an ignorance or mistake-of-fact defense under HRS § 702-218 (1993) where Souza offered no evidence, direct or circumstantial, at trial supporting or warranting such a defense. HRS § 702-218; HRS § 701-115(2) (1993); State v. Maelega, 80 Hawai'i 172, 178-79, 907 P.2d 758, 764-65 (1995); Loevsky v. Carter, 70 Haw. 419, 432, 773 P.2d 1120, 1128 (1989); State v. Locquiao, 100 Hawai'i 195, 208, 58 P.3d 1242, 1255 (2002); State v. Eberly, 107 Hawai'i 239, 251, 112 P.3d 725, 737 (2005).

Therefore,

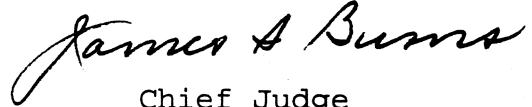
IT IS HEREBY ORDERED that the Judgment of Conviction and Probation filed on November 9, 2005 in Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 24, 2007.

On the briefs:

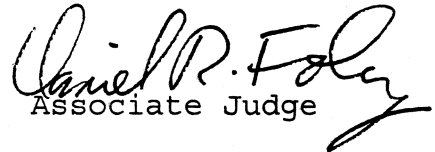
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Lawrence I. Kawasaki
for Defendant-Appellant.

Lawrence A. Goya,
Senior Deputy Attorney General,
for Plaintiff-Appellee.


Chief Judge



Associate Judge


Associate Judge