

NO. 27629

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
MICHAEL J. GOLOJUCH, JR., Defendant-Appellant

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

2007 FEB - 2 AM 8:46

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
EWA DIVISION
(HPD CRIMINAL NO. 04351377)

MEMORANDUM OPINION

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

Defendant-Appellant Michael J. Golojuch, Jr. (Golojuch) appeals from the Judgment entered in the District Court of the First Circuit¹ on November 8, 2005 convicting him of Theft in the Fourth Degree, Hawaii Revised Statutes (HRS) § 708-833(1) (1993),² sentencing him to pay \$70 restitution to Friends of Mark Moses, a \$200 fine, and a \$30 Criminal Injury Compensation Fee, and ordering him, for six months, to stay away from Mark Moses (Moses), the Moses residence, and Moses's immediate family, except at public forums or political events. We affirm.

¹ Judge Michael A. Marr presided.

² Hawaii Revised Statutes (HRS) § 708-830(1) (1993) states:

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

- (1) Obtains or exerts unauthorized control over property. A person obtains, or exerts control over, the property of another with intent to deprive the other of the property.

HRS § 708-833(1) (1993) states:

Theft in the fourth degree. (1) A person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of \$100.

Honolulu Police Department (HPD) Officer U.K. Chan (Officer Chan) testified that in September 2002, he had an encounter with Golojuch on an election day when the wife of Moses reported that Golojuch had taken down some of the campaign signs of Moses on Anipeahi Street. At that time, Officer Chan informed Golojuch that if he observed any kind of campaign sign violation he should report it to the elections office or the HPD, rather than taking matters into his own hands and personally removing other people's property.

Evidence was presented that, on September 18, 2004, the day of a primary election, Moses and his son (Son) were on Panana Street near Mauka Lani Elementary School waving signs in support of the campaign by Moses for re-election as State Representative. Golojuch pulled up in his car, parked nearby, and approached two signs that Moses and Son had attached to a nearby light pole. When Moses saw Golojuch taking down the signs, Moses told Golojuch "don't take my signs, you're stealing my signs, that's my property." Meanwhile, Son took photos of Golojuch. Golojuch responded that the signs were "abandoned" and he took them down. Moses called 911 as Golojuch, with "[l]augh[s] and big, smirking smiles," put the signs in the back seat of his car and drove away. Golojuch later threw the signs in his rubbish can.

Arthur Challacombe (Challacombe), Chief of Customer Service at the City and County of Honolulu Department of Planning and Permitting (DPP), testified that posting a sign on a

telephone pole or bus stop, or along any public highway, is not permitted under the Ordinances of the City and County of Honolulu. Challacombe also testified on the proper procedures undertaken when complaints about illegally posted signs are made to DPP. First, if the owner can be identified, a notice of violation is issued against the business or owner. If the owner cannot be identified, or if the notified owner refuses to remove an illegally posted sign, the signs are considered abandoned and DPP sends an inspector to remove them. Once removed by the inspector, the signs are normally held at Honolulu Municipal Building for thirty days while an attempt is made to notify the owner. If the owner cannot be located within thirty days then the sign is considered to be abandoned and is disposed of by the city. According to Challacombe, "there is [a criminal penalty] in the ordinance if it's construed as litter, HPD can issue a citation, a criminal citation, but they have to catch them in the act."

HRS § 708-834 (1)(b) (1993) states that "[i]t is a defense to a prosecution for theft that the defendant: . . . [b]elieved that the defendant . . . was authorized, by the owner or by law, to obtain or exert control as the defendant did."

Golojuch testified:

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I made one more attempt see if [Moses] would remove his illegally posted campaign signs, he did not respond, so at that point, I removed them knowing from my experience in 2002 that

it was fully within my right to Keep [sic] Makakilo free of campaign litter.

Q [BY ATTORNEY FOR DEFENDANT] Okay. When you removed those signs, did you think you were stealing them?

A No, that was never my intention. My intention was to keep Makakilo clean. It's been one of my long-standing policies that we should not have illegally posted signs everywhere.

Q Did you intend to deprive Mr. Moses of his signs?

A That was never my intent.

Golojuch further testified:

Q [BY DEPUTY PROSECUTING ATTORNEY] Could you tell me where in any of the law that you studied it says that a private citizen can go and take down a sign?

A I didn't see anywhere where it said I couldn't do it.

Q Okay. Now, are you familiar with the procedures of a sign that is removed when it's illegally posted?

A Yes, you're supposed to call the city and county department of planning and permitting. I talked to, I've dealt with Mr. Challacombe before in the past . . . , and the process is you call him, they send out a surveyor, but this was on a Saturday of the primary and Mark Moses should not be able to benefit from his illegal activities. And winning a house seat that pays forty thousand dollars is a benefit from an illegal activity, so I had no recourse at that time to immediately have this cease and desist.

Golojuch argues "there was insufficient evidence presented at trial to support a determination that he ever intended to deprive Representative Mark Moses of his property." We disagree.

We have long held that evidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or a jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed.

"Substantial evidence" as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. And as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence.

State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996)

(quoting State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458

(1995)) (internal quotation marks and brackets omitted).

Accordingly, the November 8, 2005 Judgment is affirmed.

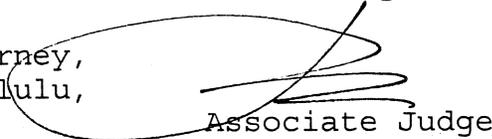
DATED: Honolulu, Hawai'i, February 2, 2007.

On the briefs:

Eric A. Seitz
for Defendant-Appellant.


Chief Judge

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Associate Judge


Associate Judge