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NO. 29004

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
PATRICIA L. SHARPE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(CASE NO. 2P107-01737)

SUMMARY DISPOSITION ORDER
(By: Recktenwald, C.J., Watanabe and Fujise, JJ.)

Defendant-Appellant Patricia L. Sharpe appeals from the January 18, 2008 judgment entered in the District Court of the Second Circuit, Wailuku Division (district court),[1] convicting her of Theft in the Fourth Degree, in violation of Hawaii Revised Statutes § 708-833(1) (1993).

The charge stemmed from an incident on June 13, 2007, in which Sharpe took three bottles of liqueur from the Kahului Foodland, and was stopped outside the store by a Foodland loss prevention employee.

On appeal, Sharpe contends there was insufficient evidence to convict her of Theft in the Fourth Degree. Specifically, she contends that "[t]he record shows that Ms. Sharpe's [sic] did not intend to unlawfully deprive Foodland of the three bottles of liqueur."

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 raised by the parties, we resolve Sharpe's point of error as follows:

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[1] The Honorable Mimi Desjardins presided.

There was substantial evidence to support the district court's determination of Sharpe's guilt. State v. Matavale, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007). The loss prevention employee testified that he observed Sharpe take the bottles from the shelf, put them inside a red bag, and then put the red bag inside a black bag. The employee further testified that after Sharpe spent some more time in the store, she walked past several open check-out counters without attempting to pay for the items, and proceeded outside the store, where he stopped her. Based on the loss prevention employee's testimony, the circuit court could reasonably infer that Sharpe intended to steal the items when she walked out of the store without paying for them. Id. at 158, 166 P.3d at 331 (noting that, "as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence"). Moreover, as the trier-of-fact, the district court was free to reject Sharpe's version of what transpired at the store and to credit the loss prevention employee's testimony. Wilton v. State, 116 Hawai'i 106, 110 n. 7, 170 P.3d 357, 361 n.7 (2007).

As Sharpe points out, the district court commented at one point that even if Sharpe "had permission to remove the items from the store, it really doesn't tell the Court anything about whether she had the intent to steal it or not. Even assuming arguendo that the court's comment reflected a misunderstanding of the law, it does not invalidate the court's ruling since the court went on to reject Sharpe's testimony that she had obtained permission from a check-out clerk before walking outside. See State v. Miner, 2 Haw. App. 581, 584, 637 P.2d 782, 784 (1981)

("In determining whether there is substantial evidence to support the verdict, the reviewing court can and must look at the entire record, and not just the oral statements made by the judge, so that even where the judge's reasoning is erroneous, if the evidence on the whole supports the finding of guilt, the judgment will be affirmed.").

Therefore,

IT IS HEREBY ORDERED that the judgment entered on January 18, 2008, in the District Court of the Second Circuit, Wailuku Division, is affirmed.

DATED: Honolulu, Hawai'i, November 21, 2008.

On the briefs:

Christian G. Enright,
Deputy Public Defender,
for Defendant-Appellant.

Scott K. Hanano,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

Mark Recktenwald

Chief Judge

Corinne K.A. Watanabe

Associate Judge

Associate Judge