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NO. 29027

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 NOV 21 AM 8:13

FILED

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MICHAEL THOMAS RANDALL, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
KANEOHE DIVISION
(HPD Criminal No. 07359626 (1P40701028))

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

Defendant-Appellant Michael Thomas Randall (Randall) appeals the Judgment filed on January 25, 2008 in the District Court of the First Circuit, Kaneohe Division (district court).[1]

On January 25, 2008, the district court convicted Randall of Criminal Trespass in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-814(1)(a) (Supp. 2007).

On appeal, Randall contends the district court erred by admitting witness testimony because the testimony was irrelevant and more prejudicial than probative and there was insufficient evidence to prove that he unlawfully entered or remained on the premises.

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 Randall's point of error as follows:

The district court did not abuse its discretion by admitting testimony of the complaining witness because the testimony was relevant as foundation and there was no danger of unfair prejudice. "In a bench trial, we presume that the judge

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[1] The Honorable David W. Lo presided.

was not influenced by incompetent evidence. This means that when evidence is admissible for a limited purpose, we presume that the judge only considered the evidence for the permissible purpose." State v. Lioen, 106 Hawai'i 123, 133, 102 P.3d 367, 377 (App. 2004) (citations omitted).

There was substantial evidence to convict Randall of Criminal Trespass in the Second Degree because he knowingly entered into a premises that was fenced. The complaining witness testified that she observed Randall exiting her backyard through a side gate. She also testified that her lot had a fence all the way around except for the portion next to the stream. Randall admitted that he did not have anyone's permission to enter the backyard.

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on January 25, 2008 in the District Court of the First Circuit, Kaneohe Division, is affirmed.

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

On the briefs:

Sandra Kim,
Deputy Public Defender,
for Defendant-Appellant.

Brian R. Vincent,
Deputy Prosecuting Attorney,
for Plaintiff-Appellee.

Chief Judge

Associate Judge

Associate Judge