

NO. 29311

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MI AE SCHNEIDER, Defendant-Appellant

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APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(HPD Cr. No. 07504609 (1P108-00224))

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Fujise and Leonard, JJ.)

Defendant-Appellant Mi Ae Schneider (Schneider) appeals from a Judgment of Conviction filed on July 9, 2008 in the District Court of the First Circuit, Honolulu Division¹ for one count of prostitution in violation of Hawaii Revised Statutes (HRS) § 712-1200 (1993 & Supp. 2008). On appeal, Schneider argues, among other issues, that there was insufficient evidence to support a prima facie case that she engaged in prostitution. We agree.

HRS § 712-1200 currently provides, as it did at the time Schneider allegedly violated its provision, in relevant part, as follows:

Prostitution. (1) A person commits the offense of prostitution if the person engages in, or agrees or offers to engage in, sexual conduct with another person for a fee.

(2) As used in subsection (1), "sexual conduct" means "sexual penetration," "deviate sexual intercourse," or "sexual contact," as those terms are defined in section 707-700.

There was no evidence at trial that Schneider engaged in, or agreed or offered to engage in "sexual penetration" or

¹ The judgment was entered by the Honorable Lono J. Lee.

"deviate sexual intercourse" as those terms are defined in HRS § 707-700. The issue at trial, therefore, was whether Schneider engaged in or agreed or offered to engage in "sexual contact" with another person for a fee. Currently, and at the time Schneider allegedly committed the offense of prostitution HRS § 707-700 (Supp. 2008) defined "sexual contact" as

any touching, other than acts of "sexual penetration", of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

The standard of review for the sufficiency of evidence is, viewing the evidence in the light most favorable to the prosecution, "whether there was substantial evidence to support the conclusion of the trier of fact." State v. Sprattling, 99 Hawai'i 312, 317, 55 P.3d 276, 281 (2002) (internal quotation marks omitted) (quoting State v. Young, 93 Hawai'i 224, 230, 999 P.2d 230, 236 (2000)); see also State v. Bayly, 118 Hawai'i 1, 6, 185 P.3d 186, 191 (2008).

The only witness to testify in this case was Detective Guy Yamashita (Detective Yamashita), on December 20, 2007, he testified that he went to a nightclub to investigate possible prostitution. At the club, Detective Yamashita was taken by Schneider to a booth. Schneider asked for a drink. Detective Yamashita ordered a drink and told her she could have one too. Schneider got the drinks and on her return sat next to Detective Yamashita and rubbed his groin area over his clothes as they carried on a conversation. After a while, she asked for another drink and he agreed. She continued to rub his groin area and grabbed his penis too. Schneider asked for and received two more drinks and each time, rubbed Detective Yamashita's groin area. Each drink cost Detective Yamashita twenty dollars.

Detective Yamashita testified that Schneider did not offer to commit any sexual conduct in exchange for the drinks. Defense counsel asked, "My question is did she ask or tell you that she was gonna provide any sexual conduct that evening for

the purchase of a drink?" Detective Yamashita replied, "No." Defense counsel later asked Detective Yamashita, "Okay. And so, when she touched you after you had bought her a drink, she didn't have to touch you, is that correct, you already bought her the drink?" Detective Yamashita replied, "That's true."

Without evidence that the fee is in exchange for the sexual conduct, there is no prostitution. Prostitution is "triggered by a sale of sexual services" State v. Tookes, 67 Haw. 608, 614, 699 P.2d 983, 987 (1985). At a minimum, there must be an offer or agreement to engage in sex in exchange for a fee. State v. Connally, 79 Hawai'i 123, 127, 899 P.2d 406, 410 (App. 1995). Based upon the testimony of Detective Yamashita, there was no substantial evidence that the drinks purchased by Detective Yamashita were in exchange for sexual conduct by Schneider.

Our resolution of this issue makes it unnecessary to address the other issue raised by Schneider.

Therefore,

IT IS HEREBY ORDERED that the Judgment of Conviction for one count of prostitution in violation of HRS § 712-1200(1) (1993 & Supp. 2008) filed in the District Court of the First Circuit, Honolulu Division on July 9, 2008 is reversed.

DATED: Honolulu, Hawai'i, June 26, 2009.

On the briefs:

William A. Harrison,
for Defendant-Appellant.

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Corinne K. A. Watanelle
Acting Chief Judge

Aura Oshiro
Associate Judge

[Signature]
Associate Judge