

NOT FOR PUBLICATION

NO. 26576

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

IN THE INTEREST OF

JOHN DOE

Born on December 14, 1991, a Minor

HON. J. T. YARRA
 CLERK OF APPELLATE COURTS
 STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-J NO. 0061017)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Acoba, and Duffy, JJ.)

Minor-Appellant John Doe¹ appeals from the April 14, 2004 Order of the first circuit family court (the family court) denying Minor's Motion for Reconsideration of Adjudication filed on April 5, 2004. On January 6, 2004, State of Hawai'i-Appellee (the prosecution) filed a petition against Minor in the family court, alleging that he committed the offense of theft in the fourth degree. Trial was held on March 15, 2004. The family court² found that the material allegations of the petition were proved beyond a reasonable doubt and adjudicated Minor a law violator. The disposition hearing immediately followed. A decree was entered by the family court on March 15, 2004, placing Minor on probation.

¹ For purposes of preserving confidentiality, Minor-Appellant John Doe is referred to as "Minor."

² The Honorable Karen M. Radius presided.

On April 5, 2004, Minor, through counsel, filed a "Motion for Reconsideration of Adjudication," seeking reconsideration of the March 15, 2004 adjudication on the ground of insufficient evidence of an intent to defraud. Reconsideration was not sought as to any dispositional matter. However, the "Decree Re: Law Violation Petitions" was attached as an exhibit. The family court heard the motion for reconsideration on April 14, 2004, and denied it by order entered the same day. Notice of appeal was filed by Minor on May 14, 2004. In the instant case, the appealable final order or decree was the March 15, 2004 decree disposing of the petition by placing Minor on probation. Minor moved for reconsideration of the adjudication rather than the disposition, but did attach the order of disposition to the motion. Although a defect exists because Minor filed a motion for reconsideration of the adjudication and not disposition, there is jurisdiction to decide this appeal. See In re John Doe, born on November 3, 1986, No. 26627, slip op. at 9 (Mar. 23, 2005) (stating that "the right to effective assistance of counsel should apply in juvenile 'law violator' cases as in adult criminal cases, and a defective appeal caused by counsel . . . does not invalidate the appeal").

Minor's sole point on appeal is that "there was insufficient evidence adduced at trial to establish that Minor had the requisite intent to defraud." In State v. Shinyama, 101

Hawai'i 389, 69 P.3d 517 (2003), this court said that "the prosecution had the burden of proving that [the defendant] either (a) intended to use deception to injure [the retailer's] interest, which had value, in which case the requisite state of mind as to each of the elements was 'intentionally,'" or (b) knew that he was facilitating an injury to [the retailer's] interest, which had value, in which case the requisite state of mind as to each of the elements was "knowingly." Id. at 398, 69 P.3d at 526.

As the prosecution states,

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 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.

State v. Quitog, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997) (citation omitted). "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.

State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998)

(brackets, internal quotation marks, and citation omitted).

"Furthermore, it is well-settled that an appellate court will not pass upon issues dependent upon the credibility of the witnesses and the weight of the evidence." Tachibana v. State, 79 Hawai'i 226, 239, 900 P.2d 1293, 1306 (1995) (citation omitted).

Applying the substantial evidence standard and considering the evidence in the strongest light for the prosecution, there was substantial evidence of intent to defraud. As the prosecution argues, there was substantial evidence (1) "in Minor's surreptitious behavior in looking over his should[er] . . . , as if to see if he was being observed," (2) "in hiding down side aisles," (3) "in taking physical possession of a shopping cart containing unpaid-for merchandise," and (4) in "walking by . . . cash register[s] and leaving [the] store" without paying. Although the defense states that finding of fact no. 5, to the effect that "Minor took a Sears shopping cart and his father placed three (3) boxed DVD players from a display into the shopping cart" was clearly erroneous because "[n]othing in the record establishes that Minor was the one who initially took the shopping cart," as the prosecution responds, "FOF No. 5 does not conclude that Minor *initially* took the cart." (Emphasis in original.) Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the family court's March 15, 2004 Decree Re: Law Violation Petitions, and its April 14, 2004

Order Denying Motion for Reconsideration of Adjudication Filed April 5, 2004, are affirmed.

DATED: Honolulu, Hawai'i, April 21, 2005.

On the briefs:

Joyce K. Matsumori-Hoshijo,
Deputy Public Defender, for
Minor-Appellant.

Anne K. Clarkin, Deputy
Prosecuting Attorney, City &
County of Honolulu, for
State of Hawai'i-Appellee.

