

DISSENTING OPINION BY NAKAYAMA, J.

I respectfully dissent. In my view, the evidence was sufficient for the jury to infer Petitioner's intent to find him guilty of the offense of bribery of a witness, in violation of HRS § 710-1070(1)(b) (1993). This court has departed from a strict reading of the plain language of a statute when doing so would result in an "absurd or unjust result and such literal application is clearly inconsistent with the purposes and policies of the statute." State v. Park, 55 Haw. 610, 614, 525 P.2d 586, 589-90 (1974); see State v. Bautista, 86 Hawai'i 207, 209-10, 948 P.2d 1048, 1050-51 (1997) ("The legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality." (Brackets, citation, and quotation marks omitted.)); see also State v. Sylva, 61 Haw. 385, 389, 605 P.2d 496, 498-99 (1980) (limiting construction of the plain language of HRS § 853-4(7) because, among other reasons, strictly adhering to its plain language would be inconsistent with our legislature's intent in enacting the statute). Specifically, we have long adhered to the rule of statutory construction that "even where there is no ambiguity, a departure from the literal application of statutory language will be justified if such literal application will lead to absurd consequences[,] for "[s]tatutory language must be read in the context of the entire statute, and the harm or evil it seeks to prevent must point the way to its construction." State v. Ogata, 58 Haw. 514, 518, 572 P.2d 1222, 1225 (1977).

In this regard, I respectfully disagree with the

majority's reliance on the plain language of HRS § 710-1070(1)(b). The majority concludes that reversal in this case is warranted because, pursuant to the plain language of HRS § 710-1070(1)(b), there is a lack of evidence showing that Petitioner intended to induce Zook to avoid being served with a subpoena that would compel her to testify against Petitioner. Majority opinion at 24. In so concluding, the majority dismisses, inter alia, Respondent's conclusion (7) inasmuch as, pursuant to the Commentary to HRS § 710-1070, "Respondent's suggested course[] . . . would 'run counter' to the legislature's intention to create three distinct culpable acts." Majority opinion at 29.

However, the Commentary to HRS § 710-1070 states that "[i]t is the risk of unreliable and false testimony that is the harm sought to be prevented[]" by the statute, for "the integrity of the witness' testimony is one of the fundamental requisites of our jurisprudential system." Accordingly, "substantial interference with any part of the process whereby a witness is called to testify in an official proceeding is to be condemned." Id. (emphases added). Moreover, "since each part of the process is of unique importance in assuring the availability and integrity of the witness, it follows that the sanction ought to be the same regardless of which part of this process is obstructed or perverted." Id. (emphasis added). As such, it is a person's intent to subvert this process and his actions thereto that HRS § 710-1070 guards against, see HRS § 710-1070(1) ("A person commits the offense of bribing a witness if he confers, or offers or agrees to confer, directly or indirectly, any benefit

upon a witness or a person he believes is about to be called as a witness in any official proceeding with intent to[]" (emphasis added)), "regardless of which" specific part of the process is implicated by the person's actions. See Commentary to HRS § 710-1070.

In reviewing a denial of a motion for judgment of acquittal, the standard employed by this court is the same as that employed by the trial court; namely, "[t]he standard . . . is whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the [trier of fact], a reasonable mind might fairly conclude guilt beyond a reasonable doubt." State v. Keawe, 107 Hawai'i 1, 4, 108 P.3d 304, 307 (2005). The evidence adduced at trial showed that Petitioner intended to induce Zook "not to show up to court and testify." Majority opinion at 4. In light of the Commentary to HRS § 710-1070, and viewing the evidence "in the light most favorable to the prosecution and in full recognition of the province of the [trier of fact]," Keawe, 107 Hawai'i at 4, 108 P.3d at 307, I believe that a jury could fairly infer Petitioner's intent based on the evidence adduced at trial, and therefore find Petitioner guilty of the offense of bribery of a witness, in violation of HRS § 710-1070(1)(b). Accordingly, I would hold that the circuit court did not err when it denied Petitioner's motion for a judgment of acquittal.

For the foregoing reasons, I would affirm the ICA's August 2, 2007 judgment, which affirms the first circuit court's March 28, 2006 judgment, and vacates the first circuit court's

March 31, 2006 amended judgment and remands for entry of judgment consistent with the ICA's summary disposition order.

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