

DISSENT BY ACOBA, J.

I would accept the Application for Writ of Certiorari filed by Petitioner/Defendant-Appellant Bill A. Jacobson (Petitioner) to correct the summary disposition order of the Intermediate Court of Appeals (ICA), inasmuch as contrary to the ICA's holding, under State v. Fetelee, 117 Hawai'i 53, 63, 175 P.3d 709, 719 (2008), "[a]n abuse of discretion occurs when the court clearly exceeds the bounds of reason or disregards rules or principles of law to the substantial detriment of a party litigant." (Quoting State v. Torres, 85 Hawai'i 417, 421, 945 P.2d 849, 853 (App. 1997).) The District Court of the Second Circuit (district court) abused its discretion because its denial of a continuance was substantially detrimental to Petitioner's constitutional right to compulsory process.

In all criminal prosecutions, the accused has the constitutional right to compulsory process for obtaining witnesses in his or her favor. U.S. Const. amend. VI; Haw. Const. art. I, § 14. Under State v. Diaz, 100 Hawai'i 210, 226, 58 P.3d 1257, 1273 (2002), this court held that "[a] fundamental element of due process of law is the right of compulsory process. Compulsory process protects a defendant's right to obtain witnesses in his favor." (Citing Haw. Const. art. I § 14; U.S. Const. amend. VI. (other citation omitted)).

In the case at hand, Petitioner maintains that the witness he would have called, Wayne Peters (Peters), the manager

of Foodland, witnessed and assisted Keanui Takemoto (Takemoto), the loss prevention officer and the state's chief witness, in the detention of Petitioner. Petitioner "believes that Peters's account of the incident would conflict with Takemoto's testimony and, thus, impeach his credibility." In any event, Petitioner was not afforded the opportunity to present this witness in his defense. Petitioner's subpoena for Peters was served to Foodland on August 27, 2007, two days before trial, and thus, Petitioner's right to compulsory process should not have been denied by the district court via the denial of a continuance, inasmuch as Peters did not appear at trial.

The district court based its decision solely on the testimony of Takemoto, and Petitioner was convicted without being afforded the opportunity to exercise his constitutional right to examine and present the testimony of his subpoenaed witness. In sum, the district court and the ICA both erred in finding that the denial of Petitioner's continuance would not materially prejudice him; there is nothing more fundamentally prejudicial than denying Petitioner's constitutional right to due process.

A handwritten signature in black ink, appearing to read "James A. ...", is located in the lower right quadrant of the page.