

NO. CAAP-10-0000203

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ANTHONY GEOFFREY NEWMAN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. 1P110-7632)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding J., Reifurth and Ginoza, JJ.)

Defendant-Appellant Anthony Geoffrey Newman ("Newman") appeals from the November 15, 2010 Notice of Entry of Judgment and/or Order ("Judgment") filed in the District Court of the First Circuit, Honolulu Division ("District Court").¹ Newman was convicted of Theft in the Fourth Degree in violation of Hawaii Revised Statutes § 708-833(1) (1993).²

On appeal, Newman contends that the District Court erred in that insufficient evidence existed to support his conviction.

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 affirm the Judgment and resolve Newman's point of error as follows:

¹ The Honorable T. David Woo, Jr. presided.

²

Theft in the fourth degree. (1) A person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of \$100.

[E]vidence 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 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. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed.

State v. Matavale, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007). The testimony of a single percipient witness may constitute substantial evidence to support a conviction. *State v. Eastman*, 81 Hawai'i 131, 141, 913 P.2d 57, 67 (1996).

The testimony of the ABC store manager, Douglas Agliam ("Agliam"), constituted substantial evidence in support of the State's contention that Newman took the Lipton ice tea bottle from the store without permission and without paying for it. Although Newman testified that he came into the store with the Lipton iced tea in his hand, the District Court's findings reflect that the District Court found Agliam's testimony of events more credible than Newman's testimony.

"It is well-settled that an appellate court will not pass upon issues dependant upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." *State v. Mattiello*, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999) (quoting *State v. Stocker*, 90 Hawai'i 85, 90, 976 P.2d 399, 404 (1999)) (internal quotation marks and brackets omitted). Therefore,

IT IS HEREBY ORDERED that the District Court's November 15, 2010 Judgment is affirmed.

DATED: Honolulu, Hawai'i, October 25, 2011.

On the briefs:

Phyllis J. Hironaka,
Deputy Public Defender,
for Defendant-Appellant.

Presiding Judge

Donn Fudo,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee

Associate Judge

Associate Judge