

NO. 29557

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ALBERT JESSE BURDETT, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 07-1-1441)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Defendant-Appellant Albert Jesse Burdett (Burdett) appeals the Judgment, entered on December 23, 2008, by the Circuit Court of the First Circuit (circuit court).¹

Burdett was convicted of Promoting a Dangerous Drug in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2009) and Unlawful Use of Drug Paraphernalia, in violation of HRS § 329-43.5(a) (1993).

On appeal, Burdett contends (1) the circuit court erred by denying his Motion for Judgment of Acquittal and renewed Motion for Judgment of Acquittal and (2) there was insufficient evidence to convict him.

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 resolve Burdett's points of error as follows:

¹ The Honorable Virginia L. Crandall presided.

(1) When the evidence is 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" Burdett was guilty beyond a reasonable doubt of Promoting a Dangerous Drug in the Third Degree and Unlawful Use of Drug Paraphernalia. State v. Hicks, 113 Hawai'i 60, 69, 148 P.3d 493, 502 (2006) (quoting State v. Maldonado, 108 Hawai'i 436, 442, 121 P.3d 901, 907 (2005)). Therefore, the circuit court did not err by denying Burdett's Motion for Judgment of Acquittal.

(2) There was credible evidence of "sufficient quality and probative value to enable a person of reasonable caution to support a conclusion" that Burdett knowingly possessed a dangerous drug in any amount. State v. Matavale, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007) (quoting State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992)) (brackets omitted).

There was credible evidence of "sufficient quality and probative value to enable a person of reasonable caution to support a conclusion" that Burdett knowingly used drug paraphernalia to use cocaine. Id.

Honolulu Police Officer Tyler Maalo (Officer Maalo) testified that he initially observed Burdett squatting down. As Officer Maalo approached Burdett, he observed Burdett rise and drop a glass pipe which was determined to contain cocaine. Although Burdett presented contradictory testimony that Burdett could not have been the person squatting down when Officer Maalo approached the area, and thus, not the person who possessed drugs or drug paraphernalia, the issue is one of credibility of the witnesses. Apparently, the jury found Officer Maalo's testimony credible. "It is well-settled that an appellate court will not pass upon issues dependent 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) (internal quotation marks, citation, and brackets omitted; block quote format changed).

Therefore,

IT IS HEREBY ORDERED that the Judgment, entered on December 23, 2008, by the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 9, 2010.

On the briefs:

Stuart N. Fujioka,
for Defendant-Appellant.

Presiding Judge

Delanie D. Prescott-Tate,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge