

NO. 29557

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I,
Respondent/Plaintiff-Appellee

vs.

ALBERT JESSE BURDETT,
Petitioner/Defendant-Appellant

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CR. NO. 07-1-1441)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI;
AFFIRMING THE JUDGMENT AS TO COUNT I; AND
REMANDING TO THE INTERMEDIATE COURT OF
APPEALS AS TO COUNT II

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

The Application for Writ of Certiorari filed by
Petitioner/Defendant-Appellant Albert Jesse Burdett (Petitioner)
on May 18, 2010, is accepted.

In its Summary Disposition Order, the Intermediate
Court of Appeals (ICA) affirmed the December 23, 2008 judgment of
the Circuit Court of the First Circuit (the court), convicting
Petitioner of Count I, Promoting a Dangerous Drug in the Third
Degree, Hawai'i Revised Statutes (HRS) § 712-1243 (Supp. 2009),
and of Count II, Unlawful Use of Drug Paraphernalia, HRS § 329-
43.5(a) (1993). SDO at 3.

In his Application, Petitioner questions whether "the
[ICA] violate[d] P]etitioner's rights to due process as guaranteed
by Amendments V and XIV to the U.S. Constitution and Art. I,
Sections 5 and 14 of the Constitution of the State of Hawai'i in

finding sufficient proof of the charged offense at trial[,]” maintaining that the ICA erred in denying his Motion for Judgment of Acquittal and that the verdict was not supported by the evidence. Petitioner requested reversal of his conviction or remand to the court for a new trial.

Upon careful review of the record and submissions of the parties, we hold that the ICA did not err in affirming Petitioner’s conviction as to Count I.

With respect to Count II, inasmuch as HRS § 329-43.5(a) requires an intentional state of mind and the ICA held there was sufficient evidence of a knowing state of mind of Petitioner, SDO at 2, we hold that the ICA erred. Therefore,

IT IS HEREBY ORDERED that the March 23, 2010 judgment of the ICA is affirmed as to Count I of the Information.

IT IS FURTHER ORDERED that (1) the ICA’s judgment as to Count II of the Information is vacated, and (2) this case is remanded to the ICA for reconsideration.

DATED: Honolulu, Hawai‘i, June 14, 2010.

Stuart N. Fujioka, on
the application for
petitioner/defendant-
appellant.

Delanie D. Prescott-Tate,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for respondent/plaintiff-
appellee, on the response.