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Intermediate Court of Appeals
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NO. CAAP-12-0000451

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ROICHY PESET, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 11-1-0440)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Roichy Peset ("Peset") appeals from the Judgment of Conviction and Probation Sentence, filed on April 9, 2012, in the Circuit Court of the First Circuit ("Circuit Court").^{1/} After a jury trial, the Circuit Court entered judgment against Peset for one count of Theft in the Second Degree, in violation of Hawaii Revised Statutes ("HRS") § 708-831(1)(a).^{2/} Peset was sentenced to five years probation with special conditions, including a term of imprisonment of one year, with credit for time served. On appeal, Peset argues that there was not substantial evidence 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 resolve Peset's point of error as follows:

Considering the evidence in the light most favorable to the State, as we must, there was substantial evidence to support Peset's conviction. See *State v. Richie*, 88 Hawai'i 19, 33, 960

^{1/} The Honorable Randal K.O. Lee presided.

^{2/} HRS § 708-831(1)(a) provides: "A person commits the offense of theft in the second degree if the person commits theft . . . [o]f property from the person of another[.]" HAW. REV. STAT. § 708-831(1)(a) (Supp. 2012).

P.2d 1227, 1241 (1998). The jury heard undisputed testimony that Peset approached Complainant and used a knife to cut open a plastic bag held by Complainant.^{3/} According to Peset, his intent was to take money, including a ten-dollar bill he had observed inside the bag. Peset, however, disputes that he took the money, contending instead that an unnamed friend ran off with the plastic bag after it fell to the ground.

Complainant, to the contrary, testified that upon slicing the bag, it was Peset that "picked up" the money and walked away. Complainant testified that Peset was the only person involved. After being flagged down, one of the police officers observed that Complainant was holding the "top half, which is like the handles" of a plastic bag. Both Complainant and a police officer testified to observing Peset toss a knife into nearby vegetation; the officer recovered the knife and Complainant confirmed that it was Peset's. Police found two one-dollar bills and change on Peset's person,^{4/} but did not find a ten dollar bill.

Complainant's testimony was mostly corroborated by either Peset's police interview, related testimony, or police officers' on-scene observations. While the jury heard testimony that Complainant suffers from schizophrenia, including visual and auditory hallucinations, and that he was hearing and seeing things "a little bit" the day of these events, the jury plainly credited Complainant's testimony regarding those aspects which Peset disputed. Contrary to Peset's argument on appeal, it is not our place to second-guess the jury's credibility determination. See *State v. Martinez*, 101 Hawai'i 332, 340, 68 P.3d 606, 614 (2003). Nor do we find dispositive the fact that police did not recover the ten-dollar bill. The jury may have reasonably inferred that Peset disposed of it prior to or upon arrival of the police officers. See *State v. Agard*, 113 Hawai'i

^{3/} Peset did not testify, but the jury heard a recorded police interview with Peset, and the interviewing Honolulu Police Officer testified about that interview.

^{4/} Complainant testified to having had one ten dollar bill and two one dollar bills in the bag.

321, 324, 151 P.3d 802, 805 (2007). The testimony at trial provided substantial evidence to support Peset's conviction.

Therefore,

IT IS HEREBY ORDERED that the Judgment of Conviction and Probation Sentence, filed on April 9, 2012, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 10, 2013.

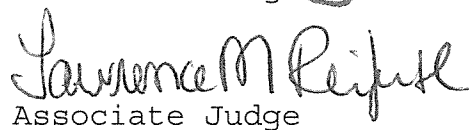
On the briefs:

Jon N. Ikenaga,
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City & County of Honolulu,
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Presiding Judge


Associate Judge


Associate Judge