NO. CAAP-15-0000490

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
JACK ROBERTS, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 14-1-0429)

SUMMARY DISPOSITION ORDER
(By: Nakamura, Chief Judge, and Leonard and Ginoza, JJ.)

Plaintiff-Appellee State of Hawai'i (State) charged Defendant-Appellant Jack Roberts (Roberts) with robbery in the second degree, in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(a) (2014).[1] The complaining witness was Gideon Gurr

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[1]HRS § 708-841(1)(a) provides, in relevant part:

> (1) A person commits the offense of robbery in the second degree if, in the course of committing theft . . .:

>> (a) The person uses force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance[.]

HRS § 708-842 (2014) provides, in relevant part:

An act shall be deemed "in the course of

(Gurr), a loss prevention officer for Times Super Market. After a jury trial, Roberts was found guilty as charged. The Circuit Court of the First Circuit (Circuit Court)[2] sentenced Roberts to four years of probation with a special condition that he serve a term of imprisonment equal to credit for time already served.

On appeal, Roberts contends that there was insufficient evidence to support his conviction because the State did not establish that he acted with the intent "to overcome anyone's resistence." We affirm.

When viewed in the light most favorable to the State, see State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998), we conclude that there was sufficient evidence to support Roberts' conviction. The second-degree robbery charge against Roberts required proof that in the course of committing theft, he used "force against the person of anyone present [(namely, Gurr)] with the intent to overcome that person's physical resistance or physical power of resistance[.]" HRS § 708-841(1)(a). For purposes of second-degree robbery, an act is in the course of committing theft "if it occurs in an attempt to commit theft . . ., in the commission of theft . . . , or in the flight after the attempt or commission." HRS § 708-842.

Here, the State presented substantial evidence that Roberts acted with the intent to overcome Gurr's physical resistance or physical power of resistance while fleeing after stealing steaks and a bottle of shoyu from Times Super Market. The evidence showed that Roberts concealed steaks under his clothes and put a bottle of shoyu in his pocket and then exited the market without paying. Gurr testified that he stopped Roberts when Roberts was about ten feet outside of the door. Gurr held Roberts' left arm, and Gurr pulled out his badge,

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committing a theft . . ." if it occurs in an attempt to commit theft . . ., in the commission of theft . . . , or in the flight after the attempt or commission.

[2]The Honorable Glenn J. Kim presided.

informed Roberts that he was part of the market's security, and asked Roberts to accompany Gurr back into the market. In response, Roberts attempted to break free from Gurr. Among other things, Gurr testified that Roberts elbowed Gurr in the shoulder, kicked Gurr in the knee causing "[a] lot of pain[,]" hit Gurr in the head, and kneed Gurr in the shoulder in an attempt to get away from Gurr.

When viewed in the light most favorable to the State, there was substantial evidence to show that Roberts used force against Gurr with the intent to overcome Gurr's physical resistance or physical power of resistance, while Roberts was fleeing after commission of a theft.[3] Accordingly, we affirm the Circuit Court's Judgment.

DATED: Honolulu, Hawaiʻi, May 26, 2016.

On the briefs:

Sandra D. Lynch   Chief Judge
(Lynch Law Offices LLLC)
for Defendant-Appellant

Stephen K. Tsushima   Associate Judge
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

                                Associate Judge

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[3]To the extent that Roberts contends that there was insufficient evidence to disprove his claim of self-defense, we also reject that contention.