

NOS. CAAP-15-0000374 AND CAAP-15-0000375

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
KEVIN A. ARDONA, Defendant-Appellant
(CRIMINAL NO. 14-1-1459)

AND

STATE OF HAWAII, Plaintiff-Appellee, v.
KEVIN A. ARDONA, Defendant-Appellant
(CRIMINAL NO. 14-1-2006)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

In the instant appeal, Defendant-Appellant Kevin A. Ardon challenges convictions arising out of two separate arrests occurring on June 10 and August 29, 2014, which were both triggered by Ardon's unlawful entry into his former residence located at 94-1038 Puana Street, Waipahu, Hawaii ("Property"). As a result of each arrest, the State of Hawaii charged Ardon with Criminal Trespass in the First Degree, in violation of Hawaii Revised Statutes ("HRS") § 708-813(1)(a)(i) (Supp. 2013). The Circuit Court of the First Circuit ("Circuit Court")^{1/} consolidated the cases prior to Ardon's two-day jury trial, which began on April 8, 2015. Although Ardon moved for judgment of acquittal on both counts during the trial, the Circuit Court

^{1/} The Honorable Christine E. Kuriyama presided.

denied his motion, and the jury convicted Ardon on both counts on April 10, 2015. On April 14, 2015, the Circuit Court entered Judgments of Conviction and Sentence; Notices of Entry in Cr. No. 14-1-1459 and Cr. No. 14-1-2006, respectively ("April 14, 2015 Judgments"), thereby sentencing Ardon to concurrent one-year terms of probation.

In this consolidated appeal,^{2/} Ardon asks this court to vacate the April 14, 2015 Judgments because, he argues,^{3/} (1) the Circuit Court erred in denying his motion for judgment of acquittal, and (2) there was insufficient evidence to support his convictions. Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments they advance and the issues they raise, we resolve Ardon's points of error as follows, and affirm:

(1) In his first point of error, Ardon contends that the trial court erred in denying his motion for judgment of acquittal. Specifically, Ardon argues that (a) the Circuit Court should have granted the motion with respect to both charges because the State failed to present sufficient evidence to show that Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Series 2005-W4 ("Deutsche Bank"), had title to the Property, and (b) the Circuit Court should have at least granted the motion as to Cr. No. 14-1-2006, because the order extending the Writ of Possession expired two days before his August 29, 2014 arrest.^{4/} These arguments are without merit.

(1)(a) Section 708-813(1)(a)(i) of the HRS provides that "[a] person commits the offense of criminal trespass in the

^{2/} This court issued an Order Granting the August 4, 2015 Motion for Consolidation of CAAP-15-0000374 and CAAP-15-0000375 on August 12, 2015, which consolidated Ardon's appeals under CAAP-15-0000374.

^{3/} In his opening brief's points-of-error section, Ardon also claims that there were no "signed Jury Verdicts" and states that both the State and Federal Constitutions were somehow violated below. Nonetheless, Ardon makes no argument to support these general contentions. Therefore, these arguments are waived, and we will not address them further. *Kakinami v. Kakinami*, 127 Hawai'i 126, 144 n.16, 276 P.3d 695, 713 n.16 (2012).

^{4/} On April 21, 2011, in a separate civil proceeding, the District Court of the First Circuit, 'Ewa Division, entered a Judgment for Possession ("JFP") and a Writ of Possession ("Writ") in favor of Deutsche Bank and against Ardon for the Property.

first degree if . . . [t]hat person knowingly enters or remains unlawfully . . . [i]n a dwelling[.]" The law does not require offenders to know the identity of the dwelling's legal owner; rather, the State need only show that an offender knew that he or she was on the property unlawfully in order to secure conviction. Here, the evidence in the record is sufficient to establish that Ardonal acted with this knowledge. *State v. Iuli*, 101 Hawai'i 196, 208, 65 P.3d 143, 155 (2003) ("[T]he state of mind of an alleged offender 'may be read from his acts, conduct, and inferences fairly drawn from all the circumstances.'" (quoting *State v. Valdivia*, 95 Hawai'i 465, 473, 24 P.3d 661, 669 (2001) (original brackets omitted))).

For example, on at least two occasions preceding the subject arrests, Ardonal was presented with the Writ which notified him of his removal from the Property, instructed him to remove his belongings from the Property, and informed him that Deutsche Bank would be put in full possession of the Property. Deutsche Bank's process server testified that she twice served the Writ on Ardonal, who on both occasions acknowledged that he understood the Writ's contents, gathered his belongings, and left the Property, which was then boarded up to prevent access. Ardonal was also present when the court issued its JFP and Writ during the civil lawsuit, and he admitted that his attorney in that case told him that he would have to pay rent in order to remain on the Property, but that he refused to do so.^{5/}

(1)(b) Ardonal's contention that the State failed to show "sufficient ownership which would make Defendant's presence unlawful at the time of the alleged offenses" because the Writ expired before his August 29, 2014 arrest appears to confuse the civil, writ-of-possession process with the requirements involved in a criminal-trespass action such as this.

Even if Ardonal is correct that the Writ expired two days before his August 29, 2014 arrest it would not affect the outcome of this case. The State must only show that the offender

^{5/} Furthermore, Ardonal testified that he knew that his attorney had filed a motion to stay enforcement of the JFP and Writ pending appeal, that his attorney had filed the appeal, and that the appeal had been dismissed.

does not have a lawful right to possess the property in question. To this end, the Writ was clearly in effect when it was served upon Ardonal and, moreover, the State presented a quitclaim deed, dated December 1, 2010 and filed in the Hawai'i Bureau of Conveyances, which shows that Deutsche Bank had purchased the Property at public auction on October 8, 2010. The State also presented testimony by the Registrar at the Hawai'i Bureau of Conveyances, who confirmed that the quitclaim deed was the last recorded deed on the Property related to the grantor or grantee. Therefore, Ardonal's expired-writ argument is both irrelevant and erroneous.

Based on the foregoing, we conclude that the evidence adduced at trial, when viewed in the light most favorable to the prosecution, allows a reasonable mind to conclude guilt beyond a reasonable doubt. *State v. Pone*, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995) (quoting *State v. Alston*, 75 Haw. 517, 528, 865 P.2d 157, 164 (1994)). Therefore, the Circuit Court did not err in denying Ardonal's motion for judgment of acquittal.

(2) Ardonal's second argument on appeal is that the jury's verdict was not supported by "substantial evidence." We disagree.

"Substantial evidence" as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." *State v. Richie*, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998) (quoting *State v. Eastman*, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996)). Furthermore, it is firmly established that courts in Hawai'i "will not pass upon the jury's decisions with respect to the credibility of witnesses and the weight of the evidence, because this is the province of the jury as the trier of fact." *State v. Jhun*, 83 Hawai'i 472, 483, 927 P.2d 1355, 1366 (1996). Accordingly, and for the reasons discussed above, we conclude that the State established such "substantial evidence to support the conclusion of the trier of fact" in this case - - i.e., that Ardonal committed two counts of criminal trespass under HRS § 708-813(1)(a)(i). *Richie*, 88

Hawai'i at 33, 960 P.2d at 1241 (quoting *State v. Quitog*, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997)).

Therefore, we affirm the Circuit Court of the First Circuit's Judgments of Conviction and Sentence; Notices of Entry in Cr. No. 14-1-1459 and Cr. No. 14-1-2006, entered on April 14, 2015.

DATED: Honolulu, Hawai'i, June 22, 2016.

On the briefs:

Stuart N. Fujioka for Defendant-Appellant.	Presiding Judge
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Brian R. Vincent, Deputy Prosecuting Attorney, City & County of Honolulu, for Plaintiff-Appellee.	Associate Judge
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Associate Judge