NO. 23098

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
TALAMOTU LEIATO, also known as Talalemotu Leiato,
Defendant-Appellant, and COLSON KANEKOA, Defendant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-1933)

MEMORANDUM OPINION
(By: Burns, C.J., Lim and Foley, JJ.)

This is an appeal of a November 24, 1998 judgment of the circuit court[1] convicting Defendant-Appellant Talamotu Leiato, also known as Talalemotu Leiato (Leiato), of Promoting a Dangerous Drug in the Second Degree, Hawaiʻi Revised Statutes (HRS) § 712-1242(1)(c) (1993),[2] and Promoting a Dangerous Drug in the Third Degree, HRS § 712-1243(1) (1993).[3] We affirm.

BACKGROUND

On September 4, 1998, Leiato and Co-Defendant Colson Kanekoa (Kanekoa) were arrested and charged with the above offenses. The events leading to the arrests were as follows:

---

[1] Circuit Court Judge Dexter D. Del Rosario presided in this case.

[2] Hawaiʻi Revised Statutes (HRS) § 712-1242(1)(c) (1993) provides, in relevant part, that "[a] person commits the offense of promoting a dangerous drug in the second degree if the person knowingly: . . . [d]istributes any dangerous drug in any amount."

[3] HRS § 712-1243(1) (1993) provides, in relevant part, that "[a] person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount."

On August 28, 1998, Police Officer Leo Kang (Officer Kang) observed what appeared to be a "rock" of crack cocaine change hands between Leiato and Kanekoa; and that Leiato was on the sidewalk and Kanekoa was in the driver's seat of his vehicle. Officer Kang arrested Kanekoa. Leiato fled the scene wearing a black fanny pack. Shortly thereafter, Officer Kang located and arrested Leiato at a local convenience store.

On December 2, 1998, Leiato filed a Motion to Suppress Items of Evidence found in the fanny pack (M/S), alleging an unreasonable search and seizure under Article 1, Section 7, of the Hawai‘i State Constitution and the Fourth Amendment of the United States Constitution. On February 8, 1999, Plaintiff-Appellee State of Hawai‘i (the State) filed a Memorandum in Opposition arguing that Leiato abandoned the fanny pack and, thus, the search did not violate his rights.

On May 19, 1999, the court heard the M/S. On May 27, 1999, the court entered the following findings of fact and conclusions of law:

FINDINGS OF FACT

> 1. [Leiato] has moved the court to suppress the following evidence:
>
> "1. Any and all substances and drug paraphernalia, which were seized on August 28, 1998, at approximately 11:57 a.m., from the black fanny pack [Leiato] had been carrying."
>
> . . . .
>
> 2. Based on the report of officer Russell Pereira . . . , the court finds that the sought-to-be-suppressed items are more specifically described as follows:

> At about 13:15 hours, I recovered from officer [Leo] KANG one black vinyl type fanny pack with various personal items within, the fanny pack was a three compartment type bag, in the rear compartment I recovered three green zip lock bags with yellowish type rocks within, $271.25 in U.S. currency, one Tylenol bottle with yellowish residue within, and one razor blade. In the middle compartment was a cellular phone, prescription type glasses, a wrist watch, and various personal paper documents. In the front most compartment I recovered a black leather type wallet which included three different picture type identification cards of the suspect LEIATO. The above items will be submitted into evidence under report #98-321064. I also recovered one yellowish type rock resembling crack cocaine from KANG and will submit it into evidence under report #98-320988.
>
> 3. LEIATO asserts, as grounds for suppression, that:
>
> In the instant case, if [Leiato's] account be credited, [Officer Kang] accosted [Leiato] and Co-Defendant [COLSON KANEKOA (Kanekoa)] during an innocent exchange of greetings. In the unfounded belief that this exchange of words was actually a drug deal, Officer Kang grabbed [Kanekoa's] arm out of [Leiato's] grasp. [Leiato], in order to avoid being questioned, left the scene.

. . . Thus, LEIATO further alleges, Honolulu Police Department officer Leo Kang (Kang) had no probable cause to either stop or arrest LEIATO a short time later when Kang found LEIATO in a nearby convenience store and observed LEIATO to discard the fanny pack onto the floor of the store.

4. Two witnesses testified at the hearing of this motion. Kang was called as a witness on behalf of the State, and LEIATO testified on his own behalf.

5. From the credible testimony adduced, the court finds the following relevant facts:

6. On August 28, 1998, Kang was conducting surveillance unrelated to this case from a building in the Hotel Street area of Downtown Honolulu. He exited the building, in uniform and on a bicycle shortly before Noon, emerging onto the eastern sidewalk fronting 1111 Maunakea Street.

7. Kang observed LEIATO standing by the open drivers-side window of a van parked facing Makai on Maunakea Street, which is a Makai-bound one-way street. LEIATO appeared to be conversing with the driver, later identified as [Kanekoa]. Pedestrian traffic was not heavy and Kang's observations were uninterrupted and were made initially at a distance of approximately fifteen (15) feet away, closing to approximately four (4) feet as the officer rode closer. It appeared to Kang that neither male had yet noticed Kang's presence.

8. From approximately four (4) feet away, Kang observed KANEKOA put his hand, palm up, out of the van window, and observed LEIATO hold his hand above KANEKOA's hand and drop a small, whitish colored object into KANEKOA's upturned palm.

9. Based on Kang's training and experience, Kang believed that the object he had observed change hands was a "rock" of crack cocaine.

10. Kang immediately grabbed KANEKOA's wrist, whereupon the whitish colored object fell to the sidewalk. Simultaneously, LEIATO ran from the scene. Kang placed KANEKOA under arrest and recovered the piece of "rock" that had fallen to the sidewalk. As soon as back-up officers arrived and took custody of KANEKOA, Kang set out in search of LEIATO. Kang indicated that LEIATO has been wearing a black fanny pack at the time of the observed transaction between LEIATO and KANEKOA.

11. Approximately ten (10) minutes later and around the corner on Hotel Street, Kang obtained a tip from an anonymous female that a male fitting LEIATO's description had gone into Fred's Sundries, located at 159 Hotel Street. Kang went to this location and, standing in the entrance to the store, observed LEIATO within the store holding the fanny pack in his hand.

12. Kang ordered LEIATO to come out of the store. LEIATO threw the fanny pack down on the floor behind a merchandise display rack and exited the store. Kang arrested LEIATO for the earlier drug transaction fronting 1111 Maunakea Street.

13. Kang went back into the store and picked up the black fanny pack. Bringing it outside, Kang asked LEIATO whether the fanny pack belonged to him. LEIATO replied, "That bag's not mine."

14. Kang recovered the fanny pack as evidence under the appropriate report number. LEIATO was subjected to a post-arrest pat-down and was transported to the police station. At the police station, Kang opened the fanny pack and found, inter alia, more crack cocaine, drug paraphernalia, over $200 in U. S. currency and several picture identification cards with LEIATO's name and picture.

15. LEIATO testified that he was greeted by KANEKOA, whom he did not initially recognize, but who told him they had met in jail; that no drug transaction occurred fronting 1111 Maunakea Street; that he was later in Fred's Sundries to purchase a soda and that when asked to come out of the store by Kang, LEIATO left his fanny pack on the store counter. LEIATO also indicated that, when Kang obtained the fanny pack from inside the store, Kang never asked him any questions about the fanny pack; that, in fact, the fanny pack belonged to a friend of his, now deceased; and that LEIATO merely had his identification, only, in the fanny pack.

16. The court finds Kang's testimony to be credible. The court finds that LEIATO's account of the same incident is not credible.

Conclusions of Law

1. Probable cause to arrest is said to exist when the facts and circumstances within an officer's knowledge, and of which one has reasonably trustworthy information, are sufficient in themselves to warrant a [person] of reasonable caution in the

belief that a crime has been or is being committed. State v. Aquinaldo, 71 Haw. 57, 782 P.2d 1225 (1989).

2. Following his observations fronting 1111 Maunakea Street, Kang had probable cause to arrest LEIATO for Promoting A Dangerous Drug in the Second Degree. See State v. Powell, 61 Haw. 316, 603 P.2d 143 (1979)(Crystalline substance on spoon on floorboard of car, coupled with needle marks on defendant's arm, coupled with officer's familiarity with narcotics paraphernalia and methods of use, provided probable cause for warrantless arrest on drug promotion charge).

3. LEIATO's act of dropping the fanny pack on the floor of the store, walking away from it exiting the store, and his subsequent affirmative denial of ownership when confronted with the pack a short time later, constituted abandonment by LEIATO of the fanny pack. State v. Mahone, 67 Haw, 644, 701 P.2d 171 (1985). Accordingly, as a matter of law, LEIATO did not, and does not, have a reasonable expectation of privacy in the fanny pack, or its contents. Id.

4. Accordingly, suppression of the "rock" observed by Kang fronting 1111 Maunakea Street, as well as the black fanny pack and/or contents, is unwarranted and will be denied.

Upon denial of the M/S, the case proceeded to the trial stage.

Voir dire was conducted on August 31, 1999. During the jury selection process, the court asked whether any of the jurors were familiar with defense counsel. After juror Clyde Hodges (Hodges) replied affirmatively, the following exchange occurred:

THE COURT: Mr. Hodges.

[HODGES]: I've had phone conferences with her while my significant other was in prison, and the response she made during my [girl friend's] parole hearing was that I was stalking her because of my repeated phone calls to find out why the process was taking so long.

THE COURT: So you have significant feelings?

[HODGES]: No, it was a resentment that I carried at the time, but I understand her position and everything. I just needed to bring this to the Court's attention.

THE COURT: We want to make sure that you can be fair. Given your experience with Ms. Wong, is that going to affect your ability to be fair to [Leiato] or [Kanekoa]?

[HODGES]: I believe I can be fair and impartial.

THE COURT: You can be fair?

[HODGES]: Mmm-hmm.

THE COURT: You can set aside the entire experience?

[HODGES]: Oh, yeah.

THE COURT: And decide this case solely on the evidence?

[HODGES]: Solely on the evidence.

. . . .

[DEFENSE COUNSEL]: You said that you believe that you can lay this aside?

[HODGES]: I believe I can.

[DEFENSE COUNSEL]: Have you harbored resentment against either me or Ms. Mahuka as a result of this?

[HODGES]: Oh, no, I'm still with her, but like I said, I didn't understand the process at the time and I let my emotions get in the way, but I work a program of recovery today and I believe I can be fair and impartial.

THE COURT: Thank you.

The court inquired into the jurors' relationships with law enforcement agencies and the Department of Public Safety.

[THE COURT]: . . .

Have any of you been employed by any law enforcement agencies such as the police department, prosecutor's office, or any federal law enforcement agencies or Department of Public Safety? The record reflects no response.

Do any of you have any relatives or close friends who are so employed?

. . . .

[HODGES]: I have a first cousin that's a police officer.

THE COURT: Anything about that relationship that would affect your ability to be fair in this case?

[HODGES]: No, it's pretty distant.

Later in the voir dire process, the court continued as follows:

[THE COURT]: The Court is going to continue addressing the jurors in the box. Is there anyone here who is unable to keep an open mind until all the evidence has been completed and the Court has told you what our laws are that apply to this case? The record reflect no response.

Do any of you have any religious, moral or philosophical reason why you cannot serve in this case? The record reflect no response.

. . . .

. . . [W]hen you come into court and you take an oath and you become a juror, that means . . . you have to . . . bind yourself to the fundamental principal [sic] that a person accused of a crime is innocent until proven guilty.

Is there anyone here who cannot accept and bind themselves to this principal [sic]?

Hodges did not respond.

Defense counsel challenged Hodges for the following cause:

[DEFENSE COUNSEL]: Your Honor, at this time I am going to challenge for cause the juror in chair number two, Mr. Clyde Hodges. Mr. Hodges has indicated that he has had prior experiences with me through his [girl friend], Adrianne Mahuka, who was my client in my capacity as a public defender and that apparently at a parole hearing for Ms. Mahuka inference was imparted to the paroling authority that Mr. Hodges was stalking Ms. Mahuka.

It appears that, therefore, there's been a very negative experience on Mr. Hodges' background that would incline him, at least would impliedly or perceivably incline him to be partial and maybe negatively with respect to the judgment of my client. I'm asking that the Court excuse Mr. Hodges for cause at this time, and I'm citing to State v. Richai (phonetic) and perceived implied bias in that particular juror.

THE COURT: [Prosecuting Attorney], what's your position?

[PROSECUTING ATTORNEY]: Well, your Honor, I questioned Mr. Hodges pretty carefully because I was interested in the same thing from the State's point of view. I found him to be candid about his past and pretty forthright in stating that he would try his best to be fair and impartial, and at this point I'm satisfied that he can be, so I'm going to object.

. . . .

> THE COURT: The Court heard Mr. Hodges' responses during the voir dire, and as well as observing his demeanor. There's an agreement, [Prosecuting Attorney], that I'm satisfied that he can be a fair and impartial juror, so the challenge is denied.

Defense counsel then used one of Leiato's peremptory challenges to excuse Hodges from the jury.

Trial commenced on August 31, 1999. On September 7, 1999, the jury convicted Leiato as charged. The November 24, 1999 judgment sentenced Leiato as a repeat offender to a maximum and "mandatory minimum term of incarceration of ten (10) years as to Count I and five (5) years as to Count II." On January 18, 2000, Leiato filed this appeal.

POINTS ON APPEAL

Leiato presents the following points on appeal:

1. Conclusions of Law nos. 3 and 4 are wrong. Leiato did not abandon his fanny pack and its contents. The trial court was wrong when it concluded that Leiato did not have a reasonable expectation of privacy in the fanny pack and its contents.

2. The trial court erred when it denied Leiato's challenge of Hodges for cause.

STANDARDS OF REVIEW

A.

Findings of Fact and Conclusions of Law

The standard for appellate review of a circuit court's findings of fact and conclusions of law is as follows: A trial court's findings of fact are reviewed under the "clearly

erroneous" standard of review. Dan v. State, 76 Hawai‘i 423, 428, 879 P.2d 528, 533 (1994). "A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made." State v. Okumura, 78 Hawai‘i 383, 392, 894 P.2d 80, 89 (1995) (citations and internal quotation marks omitted).

"The circuit court's conclusions of law are reviewed under the right/wrong standard." State v. Pattioay, 78 Hawai‘i 455, 459, 896 P.2d 911, 915 (1995) (citation omitted). State v. Anderson, 84 Hawai‘i 462, 467, 935 P.2d 1007, 1012 (1997). "A conclusion of law that is supported by the trial court's findings of fact and that reflects an application of the correct rule of law will not be overturned." Dan, 76 Hawai‘i at 428, 879 P.2d at 533.

B.

Decision to Pass a Juror for Cause

> Generally, the paramount question in determining whether to excuse for cause a prospective juror is whether the defendant would be afforded a fair and impartial trial based on the law and evidence, with the prospective juror as a member of the jury. In addressing this question, much must be left to the sound discretion of the trial judge who is in a better position than the appellate court to ascertain from the answers of the juror whether the juror is able to be fair and impartial.

State v. Baron, 80 Hawai‘i 107, 114, 905 P.2d 613, 620 (1995) (citations omitted). The trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or

principles of law or practice to the substantial detriment of a party litigant. State v. Ganal, 81 Hawai‘i 358, 373, 917 P.2d 370, 385 (1996)(citations omitted).

DISCUSSION

A.

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, section 7 of the Hawai‘i State Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

The protections afforded under Article I, section 7 of the Hawai‘i State Constitution have been extended beyond those available under the Fourth Amendment "when logic and a sound regard for the purposes of those protections have so warranted." State v. Kachanian, 78 Hawai‘i 475, 480, 896 P.2d 931, 936 (1996).

Any warrantless search or seizure is presumed to be unreasonable, invalid, and unconstitutional. The burden rests on the State to prove that the warrantless search or seizure falls within a specifically established and well-delineated exception to the warrant requirement. State v. Ortiz, 67 Haw. 181, 683

P.2d 822 (1984). The result of a failure to meet this burden is that the evidence gathered from the illegal search will be suppressed as "tainted fruits of the poisonous tree." State v. Moore, 66 Haw. 606, 659 P.2d 70 (1983).

The right to claim the protection of the Fourth Amendment of the United States Constitution or Article I, Section 7, of the Hawai‘i Constitution depends upon whether the area searched was one in which there was a reasonable expectation of freedom from government intrusion. Katz v. United States, 389 U.S. 347 (1967); State v. Dias, 52 Haw. 100, 470 P.2d 510 (1970). In State v. Bonnell, 75 Haw. 124, 139, 856 P.2d 1265, 1274 (1993) (citations omitted), the Hawai‘i Supreme Court stated that to determine when a person's expectation of privacy may be deemed reasonable, "[f]irst, one must exhibit an actual, subjective expectation of privacy. Second, that expectation must be one that society would recognize as objectively reasonable."

One has no standing to complain of a search of property he has voluntarily abandoned, Abel v. United States, 362 U.S. 217, 240-241 (1960), as upon abandonment, the party loses a legitimate expectation of privacy in the property and thereby disclaims any concern about whether the property or its contents remain private. United States v. Veach, 647 F.2d 1217, 1220 (9th Cir. 1981). Abandonment is primarily a question of intent, and may be inferred from words spoken, acts done, and other objective

facts, United States v. Colbert, 474 F.2d 174, 176 (5th Cir. 1973), including a verbal denial of ownership. State v. Mahone, 67 Haw. 644, 649, 701 P.2d 171, 175 (1985).

In the case at hand, the specific question is whether the requisite level of abandonment occurred to support the trial court's decision that Leiato had no reasonable expectation of privacy in the fanny pack. The answer is yes.

As a preliminary matter, we note that there is some ambiguity in the record as to who, either Leiato or his friend, owned the fanny pack. If the fanny pack was in fact owned by Leiato, Leiato would certainly have enjoyed a reasonable expectation of privacy in the item---at least up until the point of the alleged abandonment. On the other hand, if the fanny pack was owned by Leiato's alleged friend, now deceased, a question could be raised as to whether or not Leiato could in fact contest the search and seizure of the item. In that case, it is well settled that the outcome would turn on the degree to which Leiato enjoyed a possessory interest in the fanny pack. State v. Schafer, 946 P.2d 938 (Colo. 1997).

However, a holding of eventual abandonment of the fanny pack, as discussed below, would render an outcome identical in either situation. Therefore, for the purposes of this discussion, we will assume without deciding that Leiato possessed a reasonable expectation of privacy in the fanny pack, either

through an ownership or a possessory interest. The question is whether that expectation continued to be reasonable in spite of his actions immediately prior to and after exiting the store.

As noted above, precedent tells us that where an item of personal property has been abandoned, the owner possesses no reasonable expectation of privacy in that item. As such, where there is abandonment, there can be no expectation of privacy under the Bonnell factors.

Finding of fact no. 12 finds that upon being ordered out of Fred's Sundries, "[Leiato] threw the fanny pack down on the floor behind a merchandise display rack and exited the store." Finding of fact no. 13 finds that Officer Kang retrieved the fanny pack, brought it outside, and asked [Leiato] whether the fanny pack belonged to him. [Leiato] replied, "That bag's not mine." Leiato did not challenge these findings of fact. Moreover, they are not clearly erroneous.

In his opening brief, Leiato contends that

> [e]ven if [Leiato] did not own the fanny pack, he had an expectation of privacy in it as his identification cards were in the fanny pack. [Leiato] also had an expectation of privacy because he was using his friend's fanny pack at the time to carry his cash. [Leiato] denying ownership of the fanny pack was consistent with his testimony at the suppression hearing when he stated that the bag belonged to a friend. . . . Nevertheless, just because the fanny pack belonged to a friend did not mean that [Leiato] was not borrowing the fanny pack to transport his personal belongings, and hence, had both a subjective and objective reasonable expectation of privacy in the fanny pack.
>
> [Leiato] never testified corroborating Officer Kang's account of what transpired on August 28, 1998. Instead, [Leiato] testified that the bag did not belong to him but his roommate.

> That he was carrying the bag for his roommate. That he had possession in his roommates bag, several identifications and over $270.00 in cash.

Abandonment is a question of intent, which may be inferred from words spoken, acts done, and other objective facts, Colbert at 176, including a verbal denial of ownership. Mahone at 649. Leiato threw the fanny pack to the floor behind a merchandise display rack at Fred's Sundries, exited the store without the fanny pack, and thereafter responded that the fanny pack was not his. These acts, when considered cumulatively, make Leiato's intent to abandon the fanny pack undeniably obvious.

Leiato contends that State v. Joyner, 66 Haw. 543, 669 P.2d 152 (1983), supports his position. We conclude that it supports the State's position. In that case, Joyner and three other men were in a sauna room. A brown vinyl athletic bag was located one to two feet away from Joyner and at least six feet away from the other three. A police officer asked the four men whose bag it was and no one responded. An inspection of the contents of the bag revealed marijuana and cocaine and Joyner's driver's license and other identifications. The Hawai‘i Supreme Court affirmed the trial court's order granting Joyner's motion to suppress because Joyner "did not actively discard the bag or expressly disclaim its ownership; rather he merely remained silent when the police officer asked if any of the four men in the sauna room owned the bag." Id. at 545, 669 P.2d at 153.

Based on the facts, the conclusion of abandonment is right. Therefore, we affirm the trial court's denial of Leiato's motion to suppress.

B.

Failure to Dismiss a Juror for Cause

Because there were two defendants, Leiato had only two peremptory challenges. State v. Morishige, 65 Haw. 354, 359, 652 P.2d 1119, 1124 (1982). Leiato contends that the trial court abused its discretion by failing to dismiss Hodges for cause. We disagree.

The reviewing court is bound by the proposition that findings of impartiality should be set aside only where prejudice is manifest. State v. Graham, 70 Haw. 627, 633-34, 780 P.2d 1103, 1107 (1989). As in State v. Nupeiset, 90 Hawai‘i 175, 977 P.2d 183 (App. 1999), the situation in Leiato's case does not rise to the level of the examples of an inherent or implied bias cited in State v. Kauhi, 86 Hawai‘i 195, 200, 948 P.2d 1036, 1041 (1997). In Leiato's case, there existed no evidence of manifest prejudice on the part of Hodges. While defense counsel's initial concerns may have been justified, the subsequent discussion between Hodges and both defense counsel and the court produced no indication that Hodges could not be impartial.

As noted above, that being the case, "much must be left to the sound discretion of the trial judge who is in a better

position than the appellate court to ascertain from the answers of the juror whether the juror is able to be fair and impartial." Baron, 80 Hawai‘i at 114, 905 P.2d at 620.

Leiato further asserts that the added fact that Hodges has a first cousin serving as a police officer proves Hodges' inability to be an impartial juror. Leiato compares the facts in his case to those in Kauhi, where a trial court's failure to dismiss a deputy prosecutor as a prospective juror for cause was determined to be reversible error. The court held "that where a prospective juror is a prosecutor currently employed by the same office as the prosecutor trying the defendant, the court shall imply bias as a matter of law and dismiss the prospective juror for cause." Kauhi, 86 Hawai‘i at 200, 948 P.2d at 1041. However, the facts in Leiato's case are clearly distinguishable from those in Kauhi. There is no reason to "imply bias as a matter of law" from the fact that Hodges has a first cousin serving in law enforcement or from the combination of this fact and the fact that Hodges had been unhappy with defense counsel for statements made to the paroling authority about Hodges when defense counsel was a public defender representing Hodges' girl friend. Consequently, we hold that the trial court did not abuse its discretion when it refused to dismiss Hodges for cause.

CONCLUSION

Accordingly, we affirm the November 24, 1998 judgment of the circuit court convicting Defendant-Appellant Talamotu Leiato, also known as Talalemotu Leiato, of Promoting a Dangerous Drug in the Second Degree, HRS § 712-1242(1)(c) (1993), and Promoting a Dangerous Drug in the Third Degree, HRS § 712-1243(1) (1993).

DATED: Honolulu, Hawai‘i, May 18, 2001.

On the briefs:

Michael G. M. Ostendorp and
Shawn A. Luiz
for Defendant-Appellant.

Chief Judge

Bryan Sano,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge