

NO. 21840

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

JOHN E. SILVA, Defendant-Appellant.

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APPEAL FROM THE FIFTH CIRCUIT COURT  
(CR. NO. 97-0209)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Nakayama, JJ., and Intermediate Court of Appeals Judge Watanabe, assigned by reason of vacancy, and Acoba, J., concurring separately)

The defendant-appellant John E. Silva appeals from the judgment of conviction and sentence of the fifth circuit court, the Honorable George M. Masuoka presiding, adjudging him guilty of promoting a dangerous drug in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 712-1242(1)(b)(i) (1993), and unlawful possession of drug paraphernalia, in violation of HRS § 329-43.5(a) (1993). Silva argues: (1) that the circuit court erred in admitting irrelevant and prejudicial evidence and preventing the defense from introducing relevant evidence; (2) that the prosecutor committed repeated instances of prosecutorial misconduct, the cumulative effect of which denied Silva his right to a fair trial; and (3) that his attorney provided him with ineffective assistance.

Upon carefully reviewing 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

affirm the circuit court's judgment of conviction and sentence.

First, utilizing a "chain-of-inference" analysis, see, e.g., Walsh v. Chan, 80 Hawai'i 212, 216, 908, P.2d 1198, 1202 (1995); Kaeo v. Davis, 68 Haw. 447, 452-53, 719 P.2d 387, 291-92 (1986), evidence of the large sum of cash and food stamps found in Silva's fanny pack was relevant to a fact of consequence in his case -- i.e., whether Silva possessed the cocaine found in the paper bag. See State v. Smith, 594 P.2d 860, 862 (Or. Ct. App. 1979) (evidence of large sums of cash constitutes circumstantial evidence that the defendant had the financial means to buy a substantial quantity of narcotics, from which the jury may infer that the defendant knew of and purchased the drugs found in his home, and thus, controlled and constructively possessed them); People v. Loggins, 981 P.2d 630, 636 (Co. Ct. App. 1999) (evidence of the defendant's involvement in drug distribution, including large sums of money discovered on his person, is relevant to the issue of possession); Tolbert v. State, 718 So. 2d 731, 736 (Ala. Crim. App. 1998) (holding that food stamps and other items that might have suggested that the defendant was a drug dealer were relevant to proving the defendant's constructive possession of drugs found in his residence). Moreover, we cannot say that the circuit court abused its discretion in concluding that the probative value of the foregoing evidence was not substantially outweighed by the danger of unfair prejudice. See Hawai'i Rules of Evidence (HRE) Rule 403 (1993).

Second, the admission of the "drug type note" and Zigzag rolling papers found in the paper bag with the cocaine did not prejudice Silva's substantial rights. Hawai'i Rules of Penal Procedure (HRPP) Rule 52(a) (2000). Accordingly, because he did not object to the admission of the foregoing evidence at trial,

the trial court did not plainly err. Furthermore, Silva has waived his right to raise the issue on appeal. HRS § 641-16 (1993).

Third, the testimony of James Duarte and Lillian Henrickson was highly probative of Silva's consciousness of guilt, see State v. Cordeiro, 99 Hawai'i 390, 412, 56 P.3d 692, 714 (2002) (holding that evidence of defendant's attempts to murder a material witness to the offense with which he was charged was admissible to prove the defendant's consciousness of guilt), as well as the credibility of one of the defense's witnesses, Deann Lazaro, and we are unable to discern how this testimony might have unfairly prejudiced Silva. See HRE Rule 403.

Fourth, the circuit court did not abuse its discretion by excluding evidence that Duarte was arrested for a petty misdemeanor, inasmuch as a petty misdemeanor arising from the possession of marijuana is not relevant to a witness' credibility. See HRE Rule 609 ("evidence that the witness has been convicted of a crime is inadmissible except when the crime is one involving dishonesty").

Fifth, the prosecuting attorney did not engage in conduct the cumulative effect of which substantially prejudiced Silva's right to a fair trial. See State v. Pacheco, 96 Hawai'i 83, 93, 26 P.3d 572, 582 (2001).

Finally, Silva has failed to demonstrate that there were specific errors or omissions reflecting defense counsel's lack of skill, judgment, or diligence and that such errors or omissions resulted in either the withdrawal or substantial impairment of a potentially meritorious defense. See Cordeiro, 99 Hawai'i at 405, 56 P.3d at 707 (citations omitted).  
Therefore,

**\*\*\* NOT FOR PUBLICATION \*\*\***

IT IS HEREBY ORDERED that the circuit court's judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, March 25, 2003.

I concur in the result.

On the briefs:

Rose Anne Fletcher,  
Deputy Public Defender,  
for defendant-appellant

Craig A. De Costa,  
Deputy Prosecuting  
Attorney, for  
plaintiff-appellee