

NO. 22529

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

LORENCE ANGEL JOVE, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 97-2057)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama
Ramil, and Acoba, JJ.)

The defendant-appellant Lorence Angel Jove appeals from the judgment of conviction and sentence of the first circuit court, filed on April 26, 1999. On appeal, Jove contends that the circuit court: (1) was "wrong" (a) in precluding him from eliciting testimony from a prosecution witness regarding the witness' possible motive to commit the offense with which Jove was charged, to wit, murder in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 707-701.5 (1993), and (b) in admitting hearsay testimony from a Honolulu Police Department officer; (2) abused its discretion in admitting two autopsy photographs; and (3) erroneously instructed the jury regarding a statement given by Jove to a police officer.

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 hold that: (1) the circuit court was "right" to preclude Jove from eliciting testimony from a prosecution witness regarding her

alleged motive to commit the offense charged because the record adduced at trial did not satisfy the "legitimate tendency" test, being devoid of any evidence or proffer directly connecting or linking the witness to the commission of the charged offense, see State v. Rabellizsa, 79 Hawai'i 347, 350-51, 903 P.2d 43, 46-47 (1995); (2) even if the circuit court erroneously admitted hearsay testimony from a police officer regarding two statements allegedly made by a witness who observed Jove at the scene of the murder weeks prior to the victim's death, the error was harmless beyond a reasonable doubt, inasmuch as the record is replete with evidence on the basis of which the jury could have found that Jove was present at the murder scene at the time the charged offense was committed; accordingly, there was no reasonable possibility that the officer's testimony regarding to the hearsay statements contributed to Jove's conviction, see State v. Perez, 64 Haw. 232, 234-35, 638 P.2d 335, 337 (1981); State v. Feliciano, 2 Haw. App. 633, 637, 638 P.2d 866, 870 (1982); (3) the circuit court did not abuse its discretion in admitting the two autopsy photographs, inasmuch as the photographs (a) were relevant to the testimony of a medical examiner with respect to the angle of the wound, its depth, and the fact that the victim's carotid artery had been cut and his lung punctured, see State v. Edwards, 81 Hawai'i 293, 297-300, 916 P.2d 703, 707-710 (1996); State v. Brantley, 84 Hawai'i 112, 120-21, 929 P.2d 1362, 1370-71 (App. 1996), (b) were probative of Jove's state of mind, see id. at 120, 929 P.2d at 1370; State v. Klawfta, 73 Haw. 109, 113-14, 831 P.2d 512, 515 (1992), and (c) were not cumulative, because each depicted different internal injuries from different angles, see Edwards, 81 Hawai'i at 299-300, 916 P.2d at 709-10; therefore, the probative value of the photographs was not

substantially outweighed by the danger of unfair prejudice merely because the photographs were gruesome, see id.; and (4) even if the circuit court erroneously instructed the jury regarding Jove's statement, any error was harmless beyond a reasonable doubt; there was no reasonable possibility that the error contributed to Jove's conviction inasmuch as the trial record contained ample evidence from which the jury could find that the exculpatory portions of Jove's statement were untrustworthy, including, inter alia, (a) the testimony of two witnesses who observed Jove in proximity to the victim moments prior to the victim being stabbed, (b) the victim's dying declaration identifying Jove as the killer, and (c) the testimony of forensic experts identifying stains on Jove's shirt to be the victim's blood, cf. State v. Kelekolio, 74 Haw. 479, 514-20, 849 P.2d 58, 74-77 (1993); State v. Robinson, 82 Hawai'i 304, 313-14, 922 P.2d 358, 367-68 (1996), overruled on other grounds by State v. Tayofa, 91 Hawai'i 261, 982 P.2d 890 (1999). Therefore,

IT IS HEREBY ORDERED that the judgment of conviction and sentence of the first circuit court from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, September 15, 2000.

On the briefs:

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