

NO. 22743

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

WALLACE RODRIGUES, Defendant-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 98-1711)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Wallace W. Rodrigues appeals from the first circuit court's judgment of conviction and sentence, the Honorable Wendell Huddy presiding, for one count of murder in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 707-701.5 (1993), filed on July 27, 1999. Rodrigues's points of error on appeal are that the trial court: (1) erred when it denied his request for a new trial based on allegations of prosecutorial misconduct when the prosecution (a) transferred Rodrigues to Halawa maximum security facility, (b) used certain individuals, who were believed to be law enforcement, to intimidate jurors, (c) failed to call Sequin, who was listed as a potential witness, at trial, (d) informed the jury during closing arguments that the "mere presence" section of a jury instruction regarding accomplice liability did not apply to Rodrigues, (e) argued to the jury that Rodrigues's reliance on inconsistent defenses was evidence of his guilt, (f) commented on Rodrigues's choice to remain silent, and (g) committed multiple acts of

misconduct, the cumulative effect of which deprived him of a fair trial; (2) erred when it prohibited Rodrigues from presenting evidence of the victim's penchant for violence; and (3) erred (a) when it improperly instructed the jury on the impact of self-defense on the charge of murder in the second degree, and (b) when it failed to include a jury instruction on the mitigating defense of extreme mental or emotional disturbance to mitigate murder to manslaughter.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments and the issues raised by the parties, we hold as follows:

First, the trial court did not err when it denied Rodrigues's request for a new trial, which was premised upon prosecutorial misconduct because (1) there is no evidence supporting the contention that the prosecution was responsible for Rodrigues's transfer to Halawa maximum security facility; (2) there is no evidence supporting Rodrigues's assertion that the prosecution used certain individuals, who were believed to be law enforcement, to intimidate jurors and the jurors stated that they were not affected by seeing the individuals; (3) the prosecution was not required to adhere strictly to the witness list under Hawai'i Rules of Penal Procedure Rule 16, and assuming arguendo the prosecution engaged in misconduct, any prejudice suffered by

Rodrigues was harmless beyond a reasonable doubt; (4) the prosecutor's comments to the jury regarding the "mere presence" section of the accomplice liability instruction was a permissible comment on the evidence; (5) the prosecutor did not impermissibly comment on Rodrigues's reliance on inconsistent defenses; and (6) the prosecution's comment on Rodrigues's right to remain silent was harmless beyond a reasonable doubt because the comment was brief, alluded to testimony elicited eight days prior to closing arguments, and was not of such a character that the jury would naturally and necessarily take it to be a comment on Rodrigues's post-arrest silence.

Second, the trial court did not err when it prohibited Rodrigues from presenting evidence of the victim's prior bad acts because he failed to prove that he had knowledge of the victim's aggression prior to the shooting.

Third, the trial court did not err (1) when it did not instruct the jury on imperfect self-defense for the charge of murder in the second degree inasmuch as the defense is not recognized in this jurisdiction, State v. Holbron, 80 Hawai'i 27, 45, 904 P.2d 912, 930, reconsideration denied, 80 Hawai'i 187, 907 P.2d 773 (1995); and (2) when it refused to instruct the jury to consider the mitigating defense of extreme mental or emotional disturbance because the evidence did not support such an instruction.

THEREFORE, IT IS HEREBY ORDERED that the trial court's judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, July 31, 2001.

On the briefs:

Michael K. Tanigawa of  
Char Sakamoto Ishii Lum & Ching  
for defendant-appellant

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Prosecuting Attorney,  
for plaintiff-appellee