NO. 23121

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

YOUNG WOONG YOON, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-1387)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Young Woong Yoon appeals from the first circuit court's amended judgment of conviction of and sentence for the offenses of robbery in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 708-840(1)(b)(i) (1993), unlawful imprisonment in the first degree, in violation of HRS § 707-721 (1993), and kidnapping, in violation of HRS § 707-720(1)(e) (1993), filed on January 6, 2000. On appeal, Yoon urges this court to hold that the circuit court committed plain error in: (1) failing to inquire, sua sponte, why Yoon was being prosecuted separately from an accomplice and whether separate prosecutions would prejudice Yoon by denying him a fair trial; and (2) failing to declare, sua sponte, a mistrial due to the prosecutor's isolated remark in closing argument characterizing the conduct of Yoon and his accomplices as akin to "Nazi storm troopers . . . flying in" because the remark, which Yoon contends was an appeal to racial, ethnic, and political animus, allegedly constituted prosecutorial misconduct. 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 the circuit court did not commit plain error.

With regard to Yoon's first point on appeal, we observe that Yoon has not so much as posited, much less demonstrated, that he was denied a fair trial because he was not jointly tried with an accomplice; accordingly, we hold that he has failed to carry his burden of demonstrating that his substantial rights were affected. Moreover, we note that, assuming arguendo, that the circuit court should have inquired sua sponte why a codefendant was being prosecuted separately, the only potential evidence -- to wit, the accomplice's post-arrest statement to a police officer -- that, arguably, could have been ruled inadmissible in Yoon's trial absent a joint trial was, in fact, received into evidence at Yoon's own request. Accordingly, any hypothetical error was harmless beyond a reasonable doubt.

With respect to Yoon's second point on appeal, we hold that the prosecutor's inartful and distasteful remark was not calculated to inflame the prejudices of the jury. See State v. Rogan, 91 Hawai'i 405, 412-15, 984 P.2d 1231, 1238-41 (1999). Therefore, the remark was not, on the facts of the present matter, of such a nature as to constitute misconduct. Moreover, even if, arguendo, the remark was of such a nature, the strength of the prosecution's case against Yoon, albeit predicated on accomplice liability, was strong. In light of the evidence against Yoon and the fact that the prosecutor's comment could not have been construed as an appeal to racial, ethnic, or political animus, there is no reasonable possibility that the prosecutor's remark contributed to Yoon's convictions. Accordingly, the

remark, even if misconduct, was harmless beyond a reasonable doubt. Therefore,

IT IS HEREBY ORDERED that the first circuit court's amended judgment of conviction and sentence, filed on January 6, 2000, from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, November 16, 2000.

On the briefs:

Chester M. Kanai, for the
defendant-appellant,
Young Woong Yoon

Mangmang Qiu Brown (Deputy
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the plaintiff-appellee,
State of Hawai'i