

*** NOT FOR PUBLICATION ***

NO. 23332

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

CAROL SIMAFRANCA and MICHAEL SIMAFRANCA, Defendants-Appellants

and

DONALD A. LEWIS and DAVID KEANU SAI, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 97-3082)

SUMMARY DISPOSITION ORDER

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

Defendants-appellants Carol Simafranca (Mrs. Simafranca) and Michael Simafranca (Mr. Simafranca) [hereinafter, collectively, "the Simafrancas"] appeal, respectively, from the March 7, 2000 judgment and March 15, 2000 amended judgment¹ of the circuit court of the first circuit, the Honorable Sandra A. Simms presiding, convicting them of and sentencing them for (1) attempted theft in the first degree, in violation of Hawai'i Revised Statutes (HRS) §§ 705-500 (1993)² and 708-830.5 (1993)³

¹ With respect to Mr. Simafranca, the circuit court issued its original judgment of guilty conviction and probation sentence on March 7, 2000. On March 15, 2000, the circuit court filed an amended judgment of guilty conviction and probation sentence.

² HRS § 705-500 provides:

- (1) A person is guilty of an attempt to commit a crime if the person:
 - (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or
 - (b) Intentionally engages in conduct which, under the circumstances as the person believes them to
- (continued...)

***** NOT FOR PUBLICATION *****

(Count I), and (2) burglary in the first degree, in violation of HRS § 708-810(1)(c) (1993)⁴ (Count II).

On appeal, Mrs. Simafranca argues that the circuit court: (1) erred in denying her motion to dismiss for lack of jurisdiction; (2) erred in denying her motion for judgment of acquittal, inasmuch as there was insufficient evidence to support her conviction of attempted theft in the first degree and burglary in the first degree; (3) committed plain error in instructing the jury on the definitions of "owner" and "property of another;" (4) committed plain error in denying her motion for

²(...continued)

be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

³ HRS § 708-830.5 provides:

(1) A person commits the offense of theft in the first degree if the person commits theft:

- (a) Of property or services, the value of which exceeds \$20,000;
 - (b) Of a firearm; or
 - (c) Of dynamite or other explosive.
- (2) Theft in the first degree is a class B felony.

⁴ HRS § 708-810(1)(c) provides that

a person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and . . . [t]he person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

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bill of particulars, or, in the alternative, failing to instruct the jury that it must unanimously agree on which act constituted the substantial step in the charged offenses with respect to each defendant; (5) erred in refusing her proposed jury instruction on mistake of law; and (6) erred in refusing to require the prosecution to disclose to defense counsel information obtained in the criminal background checks it conducted on prospective jurors.

In addition, Mr. Simafranca argues that the circuit court erred in (1) allowing the prosecution to conduct background checks on prospective jurors and then not requiring the prosecution to share the results of its investigation with defense counsel, (2) not allowing defense counsel to conduct individual voir dire on the issue of native Hawaiian rights, and (3) failing to take steps to ensure that a fair and representative cross-section of the community sat as jurors.⁵

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that: (1) the circuit court exercised proper jurisdiction over Mrs. Simafranca, inasmuch as (a) the alleged offenses occurred within the State of Hawai'i, and (2) the charged offenses were criminal in nature, see HRS §§ 603-21.5, 603-23, and 701-106; State v. Jim, 80 Hawai'i 168, 907

⁵ To the extent that Mr. Simafranca's arguments are identical to Mrs. Simafranca's arguments, such arguments will be addressed together.

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P.2d 754 (1995); (2) the circuit court did not err in denying Mrs. Simafranca's motion for judgment of acquittal, inasmuch as the State presented sufficient evidence to support convictions of attempted theft in the first degree and burglary in the first degree, see HRS §§ 705-500(1)(b), 708-830.5, and 708-810(1)(c); State v. Aplaca, 96 Hawai'i 17, 25 P.3d 792 (2001); State v. Momoki, 98 Hawai'i 188, 46 P.3d 1 (App. 2002); State v. Valdivia, 95 Hawai'i 465, 24 P.3d 661 (2001); (3) the circuit court did not commit plain error in instructing the jury on the definition of "owner" and "property of another," see HRS § 708-800; State v. Hironaka, 99 Hawai'i 198, 53 P.3d 806 (2002); State v. Yamada, 99 Hawai'i 542, 57 P.3d 467 (2002); (4) the circuit court did not err in denying defense counsel's motion for bill of particulars and did not commit plain error by failing to instruct the jury that it must unanimously agree on which acts constituted the substantial step in the charged offenses, inasmuch as (a) Mrs. Simafranca had sufficient notice of the specific conduct which formed the basis of the charge of attempted theft in the first degree, and (b) there was only one episode of culpable conduct that arose when the Simafrancas entered the Uyeharas' home, wanted to take possession of it, and attempted to install a deadbolt lock, see HRS § 806-47; State v. Arceo, 84 Hawai'i 1, 928 P.2d 843 (2000); State v. Valentine, 93 Hawai'i 199, 998 P.2d 479 (2000); (5) the circuit court did not err in not instructing the jury on the mistake of law defense, inasmuch as the record is

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

devoid of evidence satisfying the criteria prescribed by HRS § 702-220 (1993) and the circuit court correctly instructed the jury regarding the defense of mistake of fact, see State v. Cabrera, 90 Hawai'i 359, 978 P.2d 797 (1999); State v. Sawyer, 88 Hawai'i 325, 966 P.2d 637 (1998); HRS § 702-220; (6) the circuit court did not abuse its discretion in not requiring the prosecution to disclose all information discovered in criminal background checks of prospective jurors, inasmuch as (a) Hawai'i law does not prohibit the prosecution from determining if a prospective juror had a criminal record, (b) the prosecution was not statutorily precluded from using criminal records during voir dire, (c) criminal records were public information, and (d) defense counsel could themselves have obtained the records of criminal conviction of prospective jurors, see HRS §§ 612-4, 635-27 and 846-8; HRPP Rule 24(a); State v. Kandies, 467 S.E.2d 67 (N.C. 1996); Cooper v. State, 611 So.2d 460 (Ala. 1992); (7) the circuit court did not abuse its discretion in denying defense counsel's request to voir dire all prospective jurors on the issue of native Hawaiian rights, see HRPP Rule 24(a); and (8) a representative cross-section of the community sat as jurors in the instant case, inasmuch as the record fails to establish that persons of Hawaiian or part-Hawaiian ancestry were underrepresented on the venire in relation to their number in the community, and, assuming arguendo that persons of Hawaiian ancestry were underrepresented, the record lacks any evidence

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

demonstrating that such representation was due to systematic exclusion in the jury selection process, see State v. Richie, 88 Hawai'i 19, 960 P.2d 1227 (1998). Therefore,

IT IS HEREBY ORDERED that the circuit court's judgments of guilty conviction and sentence, from which the appeals are taken, are affirmed.

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

T. Stephen Leong for
defendant-appellant
Michael Simafranca

Joyce K. Matsumori-Hoshijo,
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Carol Simafranca

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