

NO. 23456

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

MARK MATSON, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-0794)

SECOND AMENDED SUMMARY DISPOSITION ORDER

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

Defendant-appellant Mark Matson appeals from the May 5, 2000 judgment of first circuit court, the Honorable Victoria Marks presiding, convicting him of sexual assault in the third degree, in violation of Hawai'i Revised Statutes (HRS) § 707-732(1)(b) (1993), and attempted sexual assault in the first degree, in violation of HRS §§ 705-500 (1993) and 707-730(1)(b) (1993). On appeal, Matson raises four points of error. He contends that the trial court reversibly erred when it denied his motion for mistrial or motion for a new trial because: (1) the prosecution violated discovery rules prescribed by Hawai'i Rules of Penal Procedure (HRPP) Rule 16 and Hawai'i Rules of Professional Conduct (HRPC) Rule 3.8; (2) the admission of undisclosed evidence, which consisted of the Complainant's testimony that Matson touched his groin area while teaching him a coin trick, violated Matson's sixth amendment right to notice of the charges against him; (3) the admission of the undisclosed evidence violated his due process rights; and (4) the admission of the undisclosed evidence violated Hawai'i Rules of Evidence (HRE) Rule 404(b).

Upon careful review of the record and the briefs

submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we resolve defendant-appellant's arguments as follows: (1) while the prosecution should have been reprimanded for its imprudence when it failed to inform Matson about the Complainant's additional testimony, the nondisclosure of the undisclosed act neither violated HRPP Rule 16 nor HRPC Rule 3.8, and the trial court's denial of Matson's motions did not constitute prejudicial error; (2) Matson's constitutional rights to be apprised of the charges and to due process were not violated by the admission of the Complainant's additional testimony because it did not constitute a variance or a constructive amendment of the charges; and (3) the admission of the Complainant's additional testimony violated neither HRE Rules 404(b) nor 403 because it was admissible as evidence of Matson's intent, and Matson's substantial rights were not prejudiced to his detriment because the prosecution's failure to disclose the undisclosed act was harmless beyond a reasonable doubt.

IT IS HEREBY ORDERED that the circuit court's judgment of conviction is hereby affirmed.

DATED: Honolulu, Hawai'i, September 13, 2002.

On the briefs:

Kenneth J. Mansfield (David J. Minkin, with him on the brief)
for defendant-appellant

Caroline M. Mee,
Deputy Prosecuting Attorney,
for plaintiff-appellee