

NO. 23591

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

DAMIEN SERRANO, aka RICHARD DAMIAN SERRANO, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 95-321)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Damien Serrano appeals from the judgment of the Third Circuit Court, the Honorable Riki May Amano presiding, convicting him of murder in the second degree, in violation of Hawaii Revised Statutes (HRS) §§ 707-701.5 (1993), 702-221 (1993), 702-222(1) (1993), kidnapping, in violation of HRS §§ 707-720(1)(c) (1993), 702-221, and 707-222(1), sexual assault in the third degree, in violation of HRS § 707-732(1)(a) (1993), and sexual assault in the third degree, in violation of HRS § 707-732(1)(c) (1993). The trial court entered a judgment of conviction and sentence on June 20, 2000. On appeal, Serrano argues that the circuit court: (1) erroneously denied his motions for mistrial following an incident where an unknown male made disparaging remarks to the jury during deliberations; (2) erred when it failed to suppress involuntary statements he made to a police officer on September 18, 1993; (3) abused its discretion in denying his motion for a new trial in spite of the prosecution's failure to produce evidence; and (4) erroneously

denied his motion for a new trial because new evidence was discovered.

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) the trial court correctly denied his motions for mistrial because the trial court properly conducted voir dire of each witness, found their responses were credible, and deemed the unidentified man's remarks to be harmless beyond a reasonable doubt; (2) the motions court did not err when it denied his motion to suppress his statements made to a police officer on September 18, 1993 because the interrogation was not custodial; (3) although the prosecution acted in bad faith in providing Serrano with Soriano's statements, it was harmless beyond a reasonable doubt because Serrano failed to produce any information about or evidence that he attempted to contact Kyle Rogers and Jonah Morgan; and (4) the four-part test for a new trial, outlined in State v. Mabuti, 72 Haw. 106, 807 P.2d 1264 (1991), is not a balancing test, and, therefore, the circuit court did not abuse its discretion when it denied Serrano's motion for a new trial based on the proffered testimony of Christopher Wilmer; his testimony would probably not change the result of a later trial and would be offered for impeachment purposes only.

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

DATED: Honolulu, Hawaii, November 28, 2001.

On the briefs:

Harry Eliason for
defendant-appellant

Jack N. Matsukawa, Deputy
Prosecuting Attorney, for
plaintiff-appellee