

NO. 23621

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee

vs.

RANDALL MAKALA HATORI, Defendant-Appellant

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APPEAL FROM THE THIRD CIRCUIT COURT  
(CR. NO. 99-027K)

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

Defendant-Appellant Randall Hatori (Defendant) essentially argues on appeal that: (1) waiver of his Hawai'i Rules of Penal Procedure (HRPP) Rule 48 rights was "insufficient" because he was denied effective assistance of counsel; (2) his statements to police after he verbally requested an attorney should have been suppressed; and (3) his oral motion at trial for judgment of acquittal on all counts should have been granted.<sup>1</sup> We affirm the July 17, 2000 judgment of conviction and sentence herein but without prejudice to Defendant filing a HRPP Rule 40 motion as to the HRPP Rule 48 issues discussed infra.

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<sup>1</sup> The Honorable Ronald Ibarra presided over this matter.

I.

We do not decide the merits of Defendant's first argument inasmuch as we discern that the trial date was set for a period in excess of 180 days, contrary to HRPP Rule 48. Our decision thus is without prejudice to his filing a HRPP Rule 40 motion as to the discrepancy of the trial date setting and as to his related first argument alleging trial counsel's failure to object to a continuance of trial. In that regard we note that HRPP Rule 48 mandates that a trial court dismiss a charge "if trial is not commenced within six months from: (1) the date of the arrest or of filing of the charge, whichever is sooner . . . ." HRPP Rule 48(b)(1).<sup>2</sup> The six-month period is construed as a 180-day limit. See State v. Jackson, 81 Hawai'i 39, 50, 912 P.2d 71, 82 (1996) (citing State v. Hoey, 77 Hawai'i 17, 28, 881 P.2d 504, 515 (1994)).

Measured from the date of Defendant's arrest, the 180-day period expired on April 26, 2000. Measured from the date of the complaint, the 180-day period expired on April 29.<sup>3</sup> In the instant case, the court set the original trial date on May 2,

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<sup>2</sup> The HRPP amendments, effective July 1, 2000, do not apply to this case because Defendant was arrested on October 29, 1999. See State v. Vance, 61 Haw. 291, 300, 602 P.2d 933, 940 (1979) (holding that court applies Hawaii Rules of Criminal Procedure in effect at time of appellant's arrest).

<sup>3</sup> April 29, 2000 was a Saturday. Therefore, had the court treated the complaint as the start of the 180-day period, trial should have been scheduled for May 1, a Monday. See HRPP Rule 45(a).

2000 -- 186 days after Defendant's arrest and 183 days after Plaintiff-Appellee State of Hawai'i (the prosecution) filed charges in the district court.<sup>4</sup> None of the counsel below nor on appeal called to this court's attention the fact that the original trial date was set beyond the Rule 48 180-day period.

Rule 48 allows for several periods of exclusion when computing the time for trial commencement.<sup>5</sup> Neither the defense

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<sup>4</sup> Because the measurement of the 180 days in setting the initial trial date is not a judicial matter, we do not fault the court for the discrepancy.

<sup>5</sup> HRPP Rule 48 states in pertinent part:

**(c) Excluded Periods.** The following periods shall be excluded in computing time for trial commencement:

(1) periods that delay the commencement of trial and are caused by collateral or other proceedings concerning the defendant . . . ;

(2) periods that delay the commencement of trial and are caused by congestion of the trial docket when the congestion is attributable to exceptional circumstances;

(3) periods that delay the commencement of trial and are caused by a continuance granted at the request or with the consent of the defendant or defendant's counsel;

(4) periods that delay the commencement of trial and are caused by a continuance granted at the request of the prosecutor if:

(i) the continuance is granted because of the unavailability of evidence material to the prosecution's case, when the prosecutor has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at a later date; or

(ii) the continuance is granted to allow the prosecutor additional time to prepare the prosecutor's case and additional time is justified because of exceptional circumstances of the case;

(5) periods that delay the commencement of trial and are caused by the absence or unavailability of the defendant;

(6) the period between a dismissal of the charge by the prosecutor to the time of arrest or filing of a new charge, whichever is sooner, for the same offense, or an offense required to be joined with that offense;

(7) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for

(continued...)

nor the prosecution made any motions regarding excludable periods of time.

Due to (1) the discrepancy between the expiration of the 180-day period and the date the instant case was set for trial, and (2) the absence of any determination as to whether there were any excludable periods pursuant to HRPP Rule 48, our decision is without prejudice to (a) Defendant filing an HRPP Rule 40 motion as to such discrepancy and (b) his HRPP Rule 48

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<sup>5</sup>(...continued)

trial has not run and there is good cause for not granting a severance; and

(8) other periods of delay for good cause.

**(d) Per Se Excludable and Includable Periods of Time for Purposes of Subsection (c)(1) of this Rule**

(1) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions filed by a defendant, shall be deemed to be periods of delay resulting from collateral or other proceedings concerning the defendant: motions to dismiss, to suppress, for voluntariness hearing heard before trial, to sever counts or defendants, for withdrawal of counsel, for mental examination, to continue trial, for transfer to the circuit court, for change of venue, to secure the attendance of a witness by a material witness order, and to secure the attendance of a witness from without the state.

(2) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions or court papers, shall be deemed not to be excluded in computing the time for trial commencement: notice of alibi, requests/motions for discovery, and motions in limine, for voluntariness bearing [sic] heard at trial, for bail reduction, for release pending trial, for bill of particulars, to strike surplusage from the charge, for return of property, for discovery sanctions, for litigation expenses and for depositions.

(3) The criteria provided in section (c) shall be applied to motions that are not listed in subsections (d)(1) and (d)(2) in determining whether the associated periods of time may be excluded in computing the time for trial commencement.

(Emphases added.)

contention that his trial counsel was ineffective for failing to object to the putative continuance of trial.

## II.

In conjunction with his second argument Defendant contends: (1) that he was denied effective assistance of counsel because his trial attorney failed to file motions to suppress statements he made to police and (2) that the court erred by admitting all of his statements made to police after he requested an attorney. [OB at 15-18.] Defendant does not challenge any of the court's findings of fact as contained in the Order Granting Motion to Determine Voluntariness of Defendant's Statements and, as such, they are binding on appeal. See Puckett v. Puckett, 94 Hawai'i 471, 484, 16 P.3d 876, 889 (App. 2000) (citing Taylor-Rice v. State, 91 Hawai'i 60, 65, 979 P.2d 1086, 1091 (1999)).

First, although trial defense counsel did not file a motion to suppress statements made to the police, the voluntariness hearing held on May 4, 2000 and the court's subsequent order filed on May 30, 2000, amounted to a hearing and order regarding a motion to suppress such statements.

Second, the court did not err in refusing to suppress statements Defendant made to police after he requested an attorney because Defendant, prior to those statements, spontaneously reinitiated contact with the police. Where a

defendant invokes his or her right to an attorney but subsequently initiates a conversation with the police without a lawyer present or without having spoken to a lawyer, the defendant cannot claim that he or she was denied right to counsel. See State v. Mailo, 68 Haw. 51, 53, 731 P.2d 1264, 1266 (1987) (“We stress again that once an accused has expressed his [or her] desire to deal with police interrogators only through counsel, he [or she] cannot be further questioned until counsel has been made available to him [or her], unless the accused initiates further communication, exchanges, or conversations with the police.” (Citing Edwards v. Arizona, 451 U.S. 477, 484-85 (1981); State v. Ikaika, 67 Haw. 563, 566, 698 P.2d 281, 284 (1985); State v. Brezee, 66 Haw. 162, 164, 657 P.2d 1044, 1046 (1983).) (Emphasis added.)); see also State v. Henderson, 80 Hawai‘i 439, 441-42, 911 P.2d 74, 76-77 (1996) (“[In determining] whether a valid waiver of the right to counsel . . . occurred, [we review] whether the purported waiver was knowing and intelligent and found to be so under the totality of the circumstances, including the necessary fact that the accused, not the police, reopened the dialogue with the authorities.” (Citation omitted, emphasis added.)). Therefore, the court’s determination that Defendant’s statements to police were admissible was not wrong.

III.

Finally, Defendant urges that the court erred when it denied his motion for acquittal at the close of the prosecution's case. [OB at 18.] However,

[i]t is well settled that when the defense presents evidence after a motion for judgment of acquittal made at the close of the prosecution's case, any error by the trial court in the denial of the motion is waived by the defense. State v. Alston, 75 Haw. 517, 526 n.5, 865 P.2d 157, 163 n.5 (1994); State v. Rodrigues, 6 Haw. App. 580, 581, 733 P.2d 1222, 1223 (1987); State v. Molitoni, 6 Haw. App. 77, 78, 711 P.2d 1303, 1305 (1985).

State v. Pudiquet, 82 Hawai'i 419, 423, 922 P.2d 1032, 1036 (App. 1996). Therefore, because Defendant presented evidence following the motion, we need not address the question whether the court should have granted Defendant's motion for acquittal. See Alston, 75 Haw. at 526 and n.5, 865 P.2d at 163 and n.5 (explaining that court need not address question of whether trial court should have granted motion for judgment of acquittal where defendant presented evidence following the motion).

In any event, there was no error because, viewing the evidence "in the light most favorable to the prosecution," there was evidence "sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt." State v. Haanio, 94 Hawai'i 405, 418, 16 P.3d 246, 259 (2001) (quoting State v. Jenkins, 93 Hawai'i 87, 99, 997 P.2d 13, 25 (2000)). Therefore,

IT IS HEREBY ORDERED that the court's July 17, 2000 judgment of conviction and sentence are affirmed but without prejudice to any HRPP Rule 40 motion Defendant may choose to file with respect to HRPP Rule 48 issues as indicated herein.

DATED: Honolulu, Hawai'i, December 5, 2001.

On the briefs:

Robert D.S. Kim  
for defendant-appellant.

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Prosecuting Attorney,  
County of Hawai'i, for  
plaintiff-appellee.