

NO. 23699

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

PAMELA ANN JOHNSON, also known as
Pam and Annie, Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-0127)

SUMMARY DISPOSITION ORDER

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

_____ Defendant-Appellee Pamela Ann Johnson (Defendant) was charged with assault in the second degree, Hawai'i Revised Statutes (HRS) § 707-711(1)(d) (1993).¹ Plaintiff-Appellant State of Hawai'i (the prosecution) appeals from a July 31, 2000

¹ HRS § 707-711(1)(d) provides:

(1) A person commits the offense of assault in the second degree if:

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- (d) The person intentionally or knowingly causes bodily injury to another person with a dangerous instrument[.]

order of the first circuit court (the court)² granting Defendant's motion to suppress statements and denying the prosecution's motion to reconsider the order. For the reasons stated herein, we affirm the order granting the motion to suppress statements and denying the motion for reconsideration.

On appeal, the prosecution challenges certain findings of fact (findings) and conclusions of law (conclusions), contending that the court erroneously granted Defendant's motion to suppress because: (1) the infection in Defendant's leg at the time of her interrogation was not "severe"; (2) the detective who took the statement took action when Defendant informed him that she was in pain; (3) the court erroneously found that Defendant would not have given a statement had she been given her medication earlier; (4) the court erroneously found Defendant was afraid that if she did not give a statement, she would not receive any pain medication; and (5) the prosecution did not fail to prove that Defendant's statement was voluntary.

"A heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his [or her] privilege against self-incrimination and his right to retained or appointed counsel." State v. Green, 51 Haw. 260, 263, 457 P.2d 505, 508 (1969) (citing Miranda v. Arizona, 384

² The Honorable Michael A. Town presided over the proceedings discussed herein.

U.S. 436, 475 (1966) (asterisks and parentheses omitted)).
“After a defendant has been adequately apprised of his [or her] *Miranda* rights, he [or she] may waive effectuation of these rights provided the waiver is made voluntarily, knowingly, and intelligently.” State v. Gella, 92 Hawai‘i 135, 143, 988 P.2d 200, 208 (1999) (internal quotation marks, brackets, and citations omitted). This court has held that “the validity of a waiver concerning a fundamental right is reviewed under the totality of the facts and circumstances of the particular case.” State v. Friedman, 93 Hawai‘i 63, 69-70, 996 P.2d 268, 274-75 (2000) (citations omitted).

With respect to the voluntariness of a particular statement, “[w]e apply a de novo standard of appellate review to the ultimate issue of the voluntariness of a confession. . . . We thus examine the entire record and make an independent determination of the ultimate issue of voluntariness based upon that review and the totality of the circumstances surrounding [the defendant’s] statement.” Gella, 92 Hawai‘i at 142, 988 P.2d at 207 (internal quotation marks and citations omitted).

The prosecution challenges the following findings and conclusions:

[FINDINGS OF FACT] 3. At the time of her arrest, Defendant [] had a severely infected injury to her right leg that had occurred prior to December 30, 1999, in a separate and unrelated incident.

4. Because of this severely infected injury, Defendant [] was first transported to the Queen's Medical Center before she was transported to the Honolulu Main Police Station.

5. While at the Queen's Medical Center, Defendant's severely infected leg injury was dressed with a white bandage and she was further treated and released.

6. Defendant was in severe pain when she was transported from Queen's Medical Center to the main police station.

. . . .

11. During the preliminary questioning prior to the main interrogation, Defendant [informed Detective] Kupukaa of the suffering that she had from the pain in her infected leg, and that she was not able to get any of the police officers at the cell block area to give her her pain medication.

. . . .

13. Detective Kupukaa did not respond to Defendant's information and continued on with the interrogation's preliminary questioning.

14. Defendant then informed Detective Kupukaa that "My leg hurts", to which Detective Kupukaa asked if she could continue on with the interrogation which the transcript indicates that there was an ambiguous answer.

15. Detective Kupukaa continued on with the interrogation and preliminary questioning, and again Defendant informed him[,] "I'm in pain."

16. At this time Detective Kupukaa began to quiz Defendant on whether she wanted to continue on with the interrogation. After a short colloquy, Defendant again informed Detective Kupukaa[,] "I am in pain, It really hurts bad."

. . . .

19. Detective Kupukaa testified that he did not smell any putrid flesh and did not really understand the extent of Defendant's injury. Detective Kupukaa testified that if he had known about the true extent of Defendant's medical condition, he would not have conducted any interrogation.

. . . .

21. Defendant [] had been arrested before in the past, and when the police officers had tried to interrogate her during her past arrests she had always refused to talk with them.

22. Defendant testified she would not have agreed to give a statement had she been given access to her pain medication from the beginning of her custody status with the Honolulu Police Department.

. . . .

24. Defendant testified that she was afraid that if she did not cooperate with Detective Kupukaa and give a statement, that she would not receive any more pain medication, and the Court finds that this was in fact her belief.

[CONCLUSIONS OF LAW] 1. Based on the totality of the circumstances, the State has failed to meet its heavy burden of proving Defendant voluntarily, knowingly and intelligently waived her privilege against self-incrimination and her right to counsel. Miranda v. Arizona, 384 U.S. 436 (1966). See also State v. Green, 51 Haw. 260, 263 (1969).

. . . .

4. Based upon a review of the totality of the circumstances surrounding the interrogation of Defendant, and focusing on the nature of Defendant's injury and her medical condition, and focusing in on the action, and lack of action, by the police officers involved, Defendant's statement in this case was not voluntary.

This court has stated that

factual determinations made by the trial court deciding pretrial motions in a criminal case [are] governed by the clearly erroneous standard. A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made.

. . . . The circuit court's conclusions of law are reviewed under the right/wrong standard.

State v. Eleneki, 92 Hawai'i 562, 564, 993 P.2d 1191, 1193 (2000)

(internal quotation marks and citations omitted).

The court's findings of fact are not clearly erroneous and are supported by substantial evidence. The court's conclusions of law are supported by the findings of fact, and

reflect correct application of the law. "A conclusion of law which is supported by the trial court's findings of fact and which reflects an application of the correct rule of law will not be overturned." Nani Koolau Co. v. K & M Const., Inc., 5 Haw. App. 137, 141, 681 P.2d 580, 585 (1984) (citations omitted).

Findings 3, 4, and 5 were supported by substantial evidence. Defendant testified her leg injury stemmed from a prior incident and that she was medically treated for her injury at Queen's Hospital before being taken to the police station. Defendant testified that her leg had been "cleaned and wrapped" at the hospital, and she had been given antibiotics to prevent infection. Defendant testified to her injury and her testimony indicated her leg injury was severe. Dr. Jeffrey Lau, who operated on the leg injury, testified that Defendant was at risk for sepsis, limb loss, infection, or possibly even death. The prosecution conceded this point at the hearing on its motion for reconsideration. Even if not supported by the evidence, it appears immaterial in connection with finding 6 whether Defendant was in pain while being transported from Queens Hospital to the police station.

As to finding 11, Defendant testified she informed Detective Kupukaa that she was in pain and that she had told the cellblock police that she needed her pain medication, but they ignored her

request. As to finding 13, Detective Kupukaa initially did not respond to Defendant's statements that she was in pain and had not been allowed to obtain her medication since the morning of her arrest, saying only that he would "have . . . downstairs check on . . . this." He did not initially take Defendant down to the cellblock to retrieve her medication. As to finding 14, Defendant stated, "My leg hurts," at which point Detective Kupukaa asked if she could continue with the interview, and an inaudible response was given. As to finding 15, the detective did continue with the interrogation. When Detective Kupukaa related to Defendant that he intended to help her understand the waiver of rights form, she replied, "I'm in pain." As to finding 16, when Detective Kupukaa asked her if she would rather not continue with the interrogation, Defendant again responded, "I'm in pain," and "It hurts really bad." As to finding 19, at the hearing on the prosecution's motion for reconsideration, Detective Kupukaa testified that he did not notice any foul odor emanating from Defendant's leg injury and that if he had more fully comprehended the nature and extent of the injury, he "probably" would not have taken Defendant's statement at that time. As to finding 21, Defendant testified that in connection with prior arrests, she had not spoken with the officers or given an incriminating statement. As to finding 22, Defendant testified that she would not have given a statement had she been

given her medication at the beginning of her custody. As to finding 24, while Defendant did not "testif[y]" that she was afraid she would not receive any more pain medication, the court in finding 24 apparently inferred from her statements and the surrounding circumstances that this was "her belief."

The challenged findings are largely supported by substantial evidence. Viewing the totality of the circumstances--the severity of the injury, the withholding of medication while Defendant was in the cellblock for approximately twenty-four hours, and the access denied Defendant to medication except when her statement was being taken--the court's conclusions 1 and 4 that Defendant did not voluntarily waive her privilege against self-incrimination and right to counsel, and did not voluntarily give her statement are not wrong, considering the burden of the prosecution to prove waiver and voluntariness. Accordingly, based on the totality of the circumstances, the court was right in concluding that the prosecution did not meet its burden of proving: (1) that Defendant voluntarily, intelligently, and knowingly waived her privilege against self-incrimination and right to counsel (Conclusion 1); and (2) that the statement was voluntarily given (Conclusion 4). Therefore,

IT IS HEREBY ORDERED that the court's July 31, 2000 order granting Defendant's motion to suppress and denying the prosecution's motion for reconsideration is affirmed.

DATED: Honolulu, Hawai'i, September 24, 2001.

On the briefs:

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