
NO. 23820

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

ALBERT BATALONA, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-1549)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Albert Batalona (Defendant) appeals from the judgment of the Circuit Court of the First Circuit (the court)¹ filed on October 11, 2000, convicting him of robbery in the first degree, Hawai'i Revised Statutes (HRS) § 708-840(1)(b)(ii) (1993) (Count I); attempted murder in the first degree, HRS §§ 705-500, 707-701(1)(b),² and 706-656 (1993) (Count II); carrying, using or threatening to use a firearm in the commission of a separate felony, HRS § 134-6(a) and (e) (1993) (Count III); and possession of a prohibited firearm, HRS § 134-8(a) (1993) (Count XVII).³

¹ The Honorable Marie Milks presided over the matter.

² HRS § 707-701(1)(b) states in relevant part, that "[a] person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of . . . a peace officer . . . arising out of the performance of official duties [.]"

³ Plaintiff-Appellee State of Hawai'i (the prosecution) nolle prosequed Counts 4 through 16 which were all kidnaping charges.

Defendant was sentenced on Count I to twenty years' imprisonment with a mandatory minimum term of fifteen years, on Count II to life imprisonment without the possibility of parole, on Count III to twenty years' imprisonment with a mandatory minimum of fifteen years, and on Count XVII to five years' imprisonment with a mandatory minimum term of five years. All sentences were ordered to be served concurrently.

For the reasons discussed herein, we affirm Defendant's convictions on Counts I, II, III, and XVII.

On appeal, Defendant argues that: (1) he was deprived of a fair trial because the court precluded evidence that the prosecution "rushed to judgment" in charging that Defendant shot at a police officer; specifically, (a) the court refused to allow Detective Larry Tamashiro to testify as to whether the four robbers were initially charged in federal court, (b) the court (i) precluded Defendant from stating in his opening statement that an "arsenal" was recovered at the home of Jacob Hayme and (ii) precluded evidence of such an arsenal at trial, (c) the court disallowed evidence that Sean Matsunaga and Hayme carried backup weapons, thus demonstrating their intent to use the weapons, (d) the court permitted the prosecution to vouch for the credibility of Roger Dailey, (e) the court prohibited detailed cross-examination of Dailey about a prior robbery, (f) the court prohibited cross-examination of Charles Davis, an expert witness, regarding the "standard military practice" of carrying a full

magazine for an AR-15 rifle, (g) the court allowed Davis to testify as to the prevalence of AR-15 rifles in Hawai'i and the number that were converted into fully automatic weapons; (2) the court erred in refusing Defendant's requested jury instructions regarding the credibility of witnesses; (3) the court erred in failing to give Defendant's requested jury instruction for the offense of attempted murder in the second degree and attempted manslaughter; (4) the court erred in allowing the testimony of witnesses who were "bribed" by the prosecution; and (5) there was insufficient evidence to convict Defendant of attempted murder in the first degree.

As to his first argument: (1) with respect to Detective Tamashiro's potential testimony, Defendant did not offer any evidence of a nexus between the four men involved in the robbery being charged in federal court and a conspiracy to charge only Defendant, see State v. Kelekolio, 74 Hawai'i 479, 523 n.21, 849 P.2d 58, 78 n.21 (1993) (explaining that an offer of proof should incorporate a coherent theory of admissibility, grounded in a designated rule or rules, together with case law and other authority as appropriate, plus a proffer covering the nature and substance of the evidence), and the fact of prior federal charges did not have "any tendency to make the existence of any fact that [was] of consequence to the determination of the action more probable or less probable than it would be without the evidence," Hawai'i Rules of Evidence (HRE) Rule 401;

(2) weapons found at Hayme's residence were not relevant to whether or not he intended to fire at the police officer, see State v. Joseph, 77 Hawai'i 235, 239, 883 P.2d 657, 661 (App. 1994) (holding that the proponent must show that the physical evidence was "connected with the crime and identified as such"); (3) similarly, there was no evidence that Hayme or Matsunaga brandished or fired their backup weapons in the course of the robbery, see id.; (4) the court did not abuse its discretion in allowing Dailey to testify to the terms of his plea agreement, including the prohibition against giving false testimony, inasmuch as bias, interest, and motive are always relevant to the issue of credibility, see State v. Estrada, 69 Hawai'i 204, 220, 738 P.2d 812, 823 (1987); (5) assuming arguendo that evidence of a prior robbery was admissible for purposes of impeachment, the court did not abuse its discretion in barring Defendant from cross-examining Dailey as to whether Dailey was armed in the prior robbery because the possession of weapons is not relevant to establishing dishonesty, see State v. Peseti, 101 Hawai'i 172, 178, 65 P.3d 119, 125 (2003) (noting that a court's ruling on the scope of cross-examination at trial is within the discretion of the trial court); State v. Pacheco, 96 Hawai'i 83, 98-100, 26 P.3d 572, 587-89 (2001); (6) whether people other than Defendant chose not to fully load their AR-15 rifle magazines had no tendency to prove or disprove whether the magazine containing four bullets found in the van belonged to Defendant; and

(7) Davis's testimony that AR-15s could be legally purchased and that both new and older AR-15s could be converted to fully automatic rifles was relevant to prove under Count XVII that Defendant "manufactur[ed], possess[ed], or acquir[ed] an automatic firearm[.]"

As to Defendant's second argument, the standard of review when jury instructions or the omission thereof are at issue on appeal is whether, when read and considered as a whole, the instructions given are prejudicially insufficient, erroneous, inconsistent, or misleading. See State v. Kinnane, 79 Hawai'i 46, 49, 897 P.2d 973, 976 (1995). Instruction 8, given by the court, directed the jury to consider the witnesses' "interest" and "all other circumstances . . . bearing upon [the] credibility" of the witnesses and, thus, was sufficient to address the emphasis Defendant sought to place on the potential bias of certain witnesses identified in Defendant's proposed instructions. See State v. Stuart, 51 Haw. 656, 660-61, 466 P.2d 444, 447 (1970) ("where a given proposition of law is requested to be given in an instruction, the instruction may properly be refused where the same proposition is adequately covered in another instruction that is given").

As to Defendant's third argument, the court did not err in: (1) refusing Defendant's proposed instruction regarding the lesser included offense of attempted murder in the second degree because there was no rational basis in the evidence for a verdict

acquitting Defendant of the offense of attempted murder in the first degree and convicting him of the included offense of attempted murder in the second degree, HRS § 701-109(5) (1993) (a trial court "is not obligated to charge the jury with respect to an included offense unless there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting him of the included offense); and (2) refusing his proposed instruction regarding the alleged offense of attempted reckless manslaughter because the offense does not exist, see State v. Holbron, 80 Hawai'i 27, 33-45, 904 P.2d 912, 920-32 (1995).

As to Defendant's fourth argument, the plea agreements of certain witnesses did not constitute "bribery" under HRS § 710-1070(1)(a) because the State is not a "person" within the meaning of that statute, see State v. Arceo, 84 Hawai'i 10, 19, 928 P.2d 843, 852 (1996) (the interpretation of a statute is a question of law reviewed under the "right/wrong" standard of review or de novo); State v. Valentine, 93 Hawai'i 199, 204-05, 998 P.2d 479, 484-85 (2000) (when construing a statute, the court's foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself).

As to Defendant's last argument, there was substantial evidence to support the conviction of attempted murder in the first degree, including evidence that Dailey testified that he

saw Defendant standing on the side of a Blazer vehicle, pointing his AR-15 rifle at the police car, that he heard Defendant begin firing shots, which were "too many to count," Officer Rosskopf believed that the person firing at him used an automatic rifle because "the rate of fire was so high," and Talakai testified that Defendant told him that Defendant had fired shots at the officer with his AR-15 rifle switched to fully automatic mode, see State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995) (in reviewing the legal sufficiency of the evidence, the appellate court must view the evidence in the light most favorable to the prosecution and decide whether substantial evidence exists to support the conclusion of the trier of fact); State v. Batson, 73 Hawai'i 236, 248-49, 831 P.2d 924, 931 (1992) (substantial evidence is defined as "credible evidence which is of sufficient quality and probative value to enable a [person] of reasonable caution to support a conclusion"). Therefore,

IT IS HEREBY ORDERED that the court's October 11, 2000 judgment of conviction and sentence is affirmed.

DATED: Honolulu, Hawai'i, October 9, 2003.

On the briefs:

David F. Klein for
defendant-appellant.

James M. Anderson, Deputy
Prosecuting Attorney,
City & County of Honolulu,
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