

NO. 24078

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

JAMES THOMPSON, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 97-2401)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant James Thompson (Appellant) appeals from the January 10, 2001 judgment of conviction and sentence of the Circuit Court of the First Circuit, the Honorable Dexter D. Del Rosario presiding, convicting him of and sentencing him for: seven counts of sexual assault in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 707-730(1)(a) (1993); two counts of attempted sexual assault in the first degree, in violation of HRS §§ 705-500 and 707-730(1)(a) (1993); eight counts of sexual assault in the third degree, in violation of HRS § 707-732(1)(e) (1993); one count of sexual assault in the fourth degree, in violation of HRS § 707-733(1)(b) (1993); and two counts of kidnapping in the first degree, in violation of HRS § 707-720(1)(d) (1993). On appeal, Appellant contends that the circuit court erred by: (1) denying his motion to suppress the identifications by the complaining witnesses; (2) denying his

motions to dismiss the indictment with prejudice; (3) denying his motion for severance of the counts against him; and (4) failing to adequately instruct the jury.

Upon carefully reviewing the record and the briefs and having given due consideration to the issues raised and the arguments presented, we resolve each of Thompson's contentions on appeal as follows.

First, based on: (1) Hawai'i Rules of Appellate Procedure (HRAP) Rule 30 (2000) ("[w]hen the brief of an appellant is otherwise not in conformity with these rules, the appeal may be dismissed or the brief stricken and sanctions, including a fine, may be levied by the appellate courts"); (2) Okada Trucking Co. v. Board of Water Supply, 97 Hawai'i 450, 458, 40 P.3d 73, 81 (2002) (unchallenged findings of fact are binding on the appellate court); (3) State v. Okumura, 78 Hawai'i 383, 391, 894 P.2d 80, 88 (1995) (if an eyewitness identification is deemed impermissibly or unnecessarily suggestive, then the court considers other factors indicating the reliability of the identification); and (4) State v. Hauge, 703 Hawai'i 37, 49, 79 P.3d 131, 142 (2003) (this court may address points of error regarding pretrial motions based on oral findings of fact and conclusions of law), we hold that the trial court did not reversibly err in denying Appellant's motions to suppress the identifications by the complaining witnesses.

Second, based on State v. Pacheco, 96 Hawai'i 83, 97-98, 26 P.3d 572, 586-87 (2001), we hold that the trial court did not err in denying Appellant's motion to dismiss based on prosecutorial misconduct.

Third, based on Hauge, 103 Hawai'i at 49, 79 P.3d at 142, we hold that the trial court did not reversibly err in denying Appellant's motion to dismiss based on State v. Moriwake, 65 Haw. 47, 647 P.2d 705 (1982).

Fourth, based on State v. Matias, 57 Haw. 96, 98, 550 P.2d 900, 902 (1976), Appellant has waived his claim that the trial court abused its discretion in denying his motion for severance.

Fifth, based on Hauge, 103 Hawai'i at 47, 79 P.3d at 140, we hold that the prosecutor's question regarding the absence of similar attacks in Mililani during the three years following Appellant's arrest did not contribute to his conviction.

Sixth, based on: (1) HRAP Rule 28(b)(4) (2000) (points of error involving jury instructions shall include "a quotation of the instruction given, refused, or modified, together with the objection urged at trial" and "[p]oints not presented in accordance with this section will be disregarded"); (2) United States v. Dockery, 955 F.2d 50 (D.C. Cir. 1992); (3) State v. Aganon, 97 Hawai'i 299, 301-03, 36 P.3d 1269, 1271-73 (2001); (4) State v. Arceo, 84 Hawai'i 1, 21, 928 P.2d 843, 863 (1996); and (5) State v. Jones, 96 Hawai'i 161, 181, 29 P.3d 351, 371 (2001),

we hold that, although Appellant waived his claims of error regarding the jury instructions given in the instant case, he nevertheless fails to demonstrate plain error. Accordingly,

IT IS HEREBY ORDERED that the January 10, 2001 judgment of conviction and sentence from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, June 2, 2004.

On the briefs:

Peter Van Name Esser,
for defendant-appellant

James M. Anderson,
Deputy Prosecuting Attorney,
for plaintiff-appellee