NO. 24243

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee,

vs.

ROBERT N. WHEATON, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 00-1-1592)

SUMMARY DISPOSITION ORDER
(By: Levinson and Nakayama, JJ., and
Circuit Judge Graulty, assigned by reason of vacancy,
and Moon, C.J., dissenting with whom
Circuit Judge Wong, in place of Acoba, J., recused, joins)

The defendant-appellant Robert N. Wheaton appeals from the judgment of the first circuit court, the Honorable Russel S. Nagata presiding, convicting him of and sentencing him for the offense of unauthorized entry into a motor vehicle, in violation of Hawaiʻi Revised Statutes (HRS) § 708-836.5 (Supp. 2002). On appeal, Wheaton contends: (1) that the circuit court erred in failing to instruct the jury as to the ignorance-or-mistake-of-fact defense, where there was sufficient evidence adduced at trial to support such an instruction; (2) that the circuit court, in response to jury communication No. 1, erred in failing either to instruct the jury that a person has a right to claim an abandoned vehicle and the contents therein or, in the alternative, to provide the jury with a legal definition of abandonment; (3) that there was insufficient evidence adduced at trial to support Wheaton's conviction, inasmuch as he not only believed that the subject motor vehicle and the television set

contained therein had been abandoned, but also the prosecution failed to disprove beyond a reasonable doubt his claim-of-right defense to the underlying crime of theft, pursuant to HRS § 708-834(1)(b) (1993); (4) that the circuit court abused its discretion in denying Wheaton's motion to dismiss for de minimis infraction [hereinafter, "de minimis motion"], pursuant to HRS § 702-236 (1993); and (5) that the deputy prosecuting attorney (DPA) committed misconduct during closing and rebuttal arguments by misstating the applicable law, prejudicially commenting on Wheaton's physical appearance in order to indoctrinate and condition the jury to respond negatively toward Wheaton, and disregarding the jury instructions.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold: (1) that the circuit court erred in failing to instruct the jury, upon Wheaton's request, as to the ignorance-or-mistake-of-fact defense, inasmuch as Wheaton's testimony that he believed that the motor vehicle and its contents were abandoned supported such an instruction, see State v. Locquiao, 100 Hawai'i 195, 203, 58 P.3d 1242, 1250 (2002) ("[W]here a defendant has adduced evidence at trial supporting an instruction on the statutory defense of ignorance or mistake of fact, the trial court must, at the defendant's request, separately instruct as to the defense . . . ."); [1] (2) that, viewing the evidence in the light most

[1] In light of our disposition in the present matter, we do not address Wheaton's argument that the circuit court erred in failing to instruct the jury, in response to jury communication No. 1, as to the legal definition of abandonment or that a person has a right, as a matter of law, to take possession of abandoned property. Assuming arguendo that the circuit court erred in its response to jury communication No. 1, Wheaton's second point of error is moot, in light of our holding that Wheaton is entitled to a new trial with an instruction on the ignorance-or-mistake-of-fact defense, which we (continued...)

favorable to the prosecution, see State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992), there was substantial evidence that Wheaton "intentionally or knowingly enter[ed] or remain[ed] unlawfully in a motor vehicle with the intent to commit a crime against a person or against property rights," in violation of HRS § 708-836.5; (3) that, inasmuch as Wheaton failed to satisfy his burden of proving that his conduct "[d]id not actually cause or threaten the harm or evil sought to be prevented by the law defining [HRS § 708-836.5] or did so only to an extent too trivial to warrant the condemnation of conviction," the circuit court did not abuse its discretion in denying Wheaton's de minimis motion, see State v. Hironaka, 99 Hawai'i 198, 204, 53 P.3d 806, 812 (2002); and (4) that, upon review of the record before us, the DPA's remarks during closing and rebuttal arguments did not constitute prosecutorial misconduct, see State v. Clark, 83 Hawai'i 289, 304, 926 P.2d 194, 209 (1996) (holding that the DPA's reference to the defendant's testimony as a "cockamamie story" did not constitute misconduct, inasmuch as the remark conveyed a reasonable inference from the evidence); State v. Apilando, 79 Hawai'i 128, 141-42, 900 P.2d 135, 148-49 (1995) (holding that the DPA's closing remark that, because the defendant had the highest stake in the outcome of the case, she had the greatest motive to lie was a permissible attack on the defendant's credibility). Therefore,

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[1](...continued)
believe, based on the record before us, was essentially the subject matter of the jury's communication No. 1 to the circuit court -- i.e., "If a car is abandoned, does that mean that anyone has a right to it or its content?" Put simply, the issue of abandonment is only relevant to Wheaton's ignorance-or-mistake-of-fact defense, and, therefore, an ignorance-or-mistake-of-fact instruction clarifies the issue of abandonment for the jury.

IT IS HEREBY ORDERED that the judgment and sentence from which the appeal is taken is vacated, and the case is remanded to the circuit court for a new trial.

DATED: Honolulu, Hawai‘i, February 25, 2003.

On the briefs:

William F. Cooper,
for the defendant-
appellant Robert N. Wheaton
(withdrawn: February 12, 2002)

Attorney of record:
Dana S. Ishibashi for
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Robert N. Wheaton
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for the plaintiff-
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