

NO. 24378

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

DANTE LACUESTA, Defendant-Appellant,

and

JONATHAN PASCUA, Defendant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 00-1-1641)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Dante LaCuesta appeals from the judgment of the first circuit court, the Honorable Marie N. Milks presiding, convicting him of and sentencing him for the offenses of possession of a firearm by a person convicted of certain crimes (Count II), in violation of Hawai'i Revised Statutes (HRS) § 134-7(b) and (h) (Supp. 2001), and possession of prohibited ammunition (Count III), in violation of HRS § 134-8(c) and (d) (1993). On appeal, LaCuesta contends that the circuit court erred in: (1) excluding the testimony of several witnesses -- who would have testified that LaCuesta's codefendant, Jonathon Pascua, had admitted that he possessed the firearm in question on the night of July 8, 2000 and that LaCuesta did not possess the firearm at any time that evening -- as inadmissible hearsay pursuant to Hawai'i Rules of Evidence (HRE) Rule 804(b) (3) (1993); (2) failing to grant defense counsel's motion to withdraw

as counsel in order to testify on LaCuesta's behalf at trial regarding Pascua's alleged exculpatory statements; (3) failing to disclose, or requiring the deputy prosecuting attorney (DPA) to disclose, the existence and details of a plea agreement between Pascua and the State; (4) working with the DPA to ensure that Pascua would not testify at LaCuesta's trial and that Pascua would invoke his fifth amendment privilege against self-incrimination in order to avoid providing relevant exculpatory evidence with respect to the ownership and possession of the subject firearm on the evening of July 8, 2000; (5) excluding testimony regarding LaCuesta's debilitating medical condition; (6) excluding LaCuesta's testimony on direct examination regarding the accuracy of the diagram of the scene at the World Café on the evening of July 8, 2000; (7) manifesting a bias against LaCuesta by conducting the trial in such a manner as to deny LaCuesta a fair trial and due process of law; (8) denying LaCuesta's motion for a mistrial; and (9) granting in part the State of Hawaii's [hereinafter, "the prosecution's"] motion for consecutive term sentencing in Cr. No. 99-0-1902 and the present matter (Cr. No. 00-1-1641).

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 by the parties, we hold that: (1) the circuit court did not commit an abuse of discretion in ruling that the corroborating evidence proffered by LaCuesta was insufficient "clearly [to] indicate" the trustworthiness of Pascua's alleged exculpatory statements, see Hawai'i Rules of Evidence (HRE) Rule 804(b)(3) (1993); Chambers v. Mississippi, 410 U.S. 284, 301-02 (1973); State v. Christian, 88 Hawai'i 407, 414, 967 P.2d 239, 246 (1998); (2) the circuit

court did not commit an abuse of discretion in denying defense counsel's motion to withdraw in order to testify on LaCuesta's behalf at trial regarding Pascua's alleged exculpatory statements, see State v. Soares, 81 Hawai'i 332, 355, 916 P.2d 1233, 1256 (App. 1996), rev'd on other grounds, State v. Janto, 92 Hawai'i 19, 986 P.2d 306 (1999); (3) inasmuch as "'mere erroneous or adverse rulings by the trial judge do not spell bias or prejudice,'" see Aga v. Hundahl, 78 Hawai'i 230, 242, 891 P.2d 1022, 1034 (1995) (citing Peters v. Jamieson, 48 Haw. 247, 264, 397 P.2d 575, 586 (1964)), LaCuesta was not denied a fair trial on the basis of "judicial misconduct" and/or "bias"; (4) inasmuch as the DPA's statement during cross-examination of LaCuesta was not "'manifestly intended or was of such character that the jury would naturally and necessarily take it to be a comment'" on LaCuesta's right to remain silent, see State v. Melear, 63 Haw. 488, 496, 630 P.2d 619, 626 (1981) (citing State v. Padilla, 57 Haw. 150, 158, 552 P.2d 357, 362 (1976)), the circuit court did not commit an abuse of discretion in denying LaCuesta's motion for a mistrial; (5) inasmuch as the circuit court considered the factors set forth in HRS § 706-606 (1993), it did not commit a "plain and manifest" abuse of discretion in sentencing LaCuesta to consecutive terms of imprisonment, see State v. Cornelio, 84 Hawai'i 476, 495, 935 P.2d 1021, 1040 (1997); State v. Loa, 83 Hawai'i 335, 356, 926 P.2d 1258, 1279 (1996); State v. Gaylord, 78 Hawai'i 127, 149, 890 P.2d 1167, 1189 (1995); and (6) inasmuch as there is no evidence in the record to support LaCuesta's contentions that (a) the court and/or the prosecution failed to disclose the existence of a plea agreement between Pascua and the prosecution, (b) the court coerced Pascua into refusing to testify on his behalf, (c) the court erred by excluding testimony

regarding his debilitating heart-lung condition, and (d) the court refused to allow him to testify as to the accuracy of State's Exhibit 1, LaCuesta's third, fourth, fifth, and sixth points of error are without merit. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, August 29, 2002.

On the briefs:

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