

NO. 24592

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

DAVID LUCAS, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 00-1-0775)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant David Lucas appeals from the judgment of the first circuit court, the Honorable Karen Ahn presiding, convicting him of and sentencing him for three counts of promoting a dangerous drug in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 712-1242(1)(c) (1993). On appeal, Lucas contends that the circuit court: (1) erred in denying his motion to dismiss or, in the alternative, for judgment of acquittal based on the entrapment defense as a matter of law, pursuant to HRS § 702-237(1)(b) (1993), inasmuch as the police employed methods of persuasion or inducement, which created a substantial risk that he would commit the charged offenses even though he was not ready to commit them; (2) plainly erred in failing to instruct the jury, in accordance with this court's decision in State v. Aganon, 97 Hawai'i 299, 36 P.3d 1269 (2001), reconsideration denied, 97 Hawai'i 299, 36 P.3d 1269 (2002), that, in order to find Lucas guilty of the charged offenses, it must find that he acted with the relevant state of

mind, "knowingly," as to all elements of the offense; and (3) erred in convicting him of the charged offenses, where there was substantial evidence that he was merely acting as a "procuring agent" for the undercover officer during the incidents in connection with which he was charged.

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 err by denying Lucas's pretrial motion to dismiss or, in the alternative, for judgment of acquittal as a matter of law,¹ inasmuch as "the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact . . . [was] sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt," see State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996); State v. Yip, 92 Hawai'i 98, 105, 987 P.2d 996, 1003 (App. 1999); (2) viewing the circuit court's jury instructions in their entirety, the instructions were not "prejudicially insufficient, erroneous, inconsistent, or misleading" and, thus, were not plainly erroneous, see State v. Aganon, 97 Hawai'i 299, 302, 36 P.3d 1269, 1272 (2001), reconsideration denied, 97 Hawai'i 299, 36 P.3d 1269 (2002); and (3) viewing the evidence in the light most favorable to the prosecution, see State v. Batson, 73 Hawai'i 236, 248-49, 831 P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992), there was sufficient evidence as to each count (a) that Lucas was not acting as the undercover officer's "procuring agent" and (b) to convict Lucas of the offense of promoting a dangerous drug in the second

¹ Lucas did not assert the entrapment defense at trial.

degree, see HRS § 712-1242(1)(c). Therefore,

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

DATED: Honolulu, Hawai'i, October 31, 2002.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for the defendant-
appellant David Lucas

Mangmang Qiu Brown,
Deputy Prosecuting Attorney,
for the plaintiff-
appellee State of Hawai'i