

NO. 23105

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
RAYMOND K.K. AUGUSTIN, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 94-1294)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Foley, JJ.)

Defendant-Appellant Raymond K.K. Augustin (Augustin) appeals from the January 10, 2000, Judgment entered by the Circuit Court of the First Circuit (the circuit court).¹ Augustin contends that (1) the circuit court reversibly erred by giving jury instructions regarding justification defenses that were incorrect and misleading; (2) Augustin received ineffective assistance of counsel; (3) prosecutorial misconduct prejudiced Augustin's right to a fair trial; (4) the circuit court violated Augustin's sixth amendment rights; and (5) the record lacks substantial evidence negating Augustin's justification defense. We disagree with Augustin's contentions and affirm the January 10, 2000, Judgment of the circuit court.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to

¹The Honorable John C. Bryant, Jr. presided.

the arguments advanced and the issues raised by the parties, we resolve Augustin's points of error as follows:

(1) Augustin contends that the circuit court reversibly erred by giving jury instructions regarding justification defenses that were incorrect and misleading. The record indicates that the jury was properly instructed on Murder in the Second Degree, Manslaughter based on reckless conduct, and justifiable use of force. The instructions given were not "prejudicially *insufficient, erroneous, inconsistent, or misleading[.]*" State v. Kinnane, 79 Hawai'i 46, 49, 897 P.2d 973, 976 (1995) (internal quotation marks omitted, emphasis in original).

(2) Augustin contends that he received ineffective assistance of counsel. Augustin fails to show that defense counsel's assistance fell below the range of competence demanded of criminal defense attorneys or resulted in the withdrawal or substantial impairment of a potentially meritorious defense. Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 532 (1994).

(3) Augustin contends that prosecutorial misconduct prejudiced his right to a fair trial, warranting a new trial or the setting aside of the guilty verdict. We conclude there was no prosecutorial misconduct as contended by Augustin. Augustin's right to a fair trial was therefore not prejudiced by any

prosecutorial misconduct. State v. McGriff, 76 Hawai'i 148, 158, 871 P.2d 782, 792 (1994).

(4) Augustin contends that the circuit court violated his sixth amendment rights by improperly curtailing his right to cross-examine an adverse witness and by granting the State's motion in limine to preclude evidence offered to support his defenses. The record indicates that Augustin was permitted to cross-examine Andy Basuel regarding a prior assault and the circuit court properly excluded evidence under Hawai i Rules of Evidence Rule 404(b). Considering the extent of cross-examination otherwise permitted and the overall strength of the State's case, State v. Balisbisana, 83 Hawai i 109, 117, 924 P.2d 1215, 1223 (1996), even assuming arguendo that cross-examination was erroneously curtailed, we conclude after reviewing the record as a whole that any such error was harmless beyond a reasonable doubt. State v. Pokini, 57 Haw. 26, 30, 548 P.2d 1402, 1405 (1976).

(5) Augustin contends that the record lacks substantial evidence negating Augustin's justification defense. The record contains substantial credible evidence to support a conclusion that Augustin's use of force was not immediately necessary. Viewing the evidence in the light most favorable to the State, and in full recognition of the province of the trier of fact, we conclude that a reasonable mind might fairly conclude

guilt beyond a reasonable doubt. State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995).

Therefore,

IT IS HEREBY ORDERED that the January 10, 2000, Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawaii, December 27, 2001.

On the briefs:

Arthur E. Ross
for defendant-appellant.

Donn Fudo,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Chief Judge

Associate Judge

Associate Judge