

NO. 24217

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MICHAEL D. HATORI, Defendant-Appellant,
and GEORGETTE L. CRISOSTOMO, and
DOMINIC K. PEPEE, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 97-2004)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Michael D. Hatori (Hatori) appeals from the Judgment entered in the Circuit Court of the First Circuit¹ (circuit court) on March 21, 2001. Following a jury trial, Hatori was convicted of:

Count I, Promoting a Dangerous Drug in the First Degree in violation of Hawaii Revised Statutes (HRS) § 712-1241(1)(a)(i) (Supp. 2002);²

¹The Honorable Melvin K. Soong presided over jury selection and the first two days of trial; the Honorable Dexter D. Del Rosario presided over one day of trial, the jury verdict, and sentencing.

²HRS § 712-1241 (Supp. 2002) reads in relevant part:

§712-1241 Promoting a dangerous drug in the first degree.

(1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers[.]

Count II, Unlawful Use of Drug Paraphernalia in violation of HRS § 329-43.5(a) (1993);³ and

Count III, Promoting a Detrimental Drug in the Third Degree in violation of HRS § 712-1249 (1993).⁴

Upon careful review of 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 resolve Hatori's points of error as follows:

(1) Hatori contends the circuit court abused its discretion when it failed to sever his trial from that of co-defendants Crisostomo and Pepe where Crisostomo and Pepe were to introduce evidence that Hatori was the focus of the police investigation and search warrant, thereby causing Hatori unfair prejudice. Hatori's claim is without merit. Hatori waived his claim by failing to renew his severance motion during the course

³HRS § 329-43.5(a) (1993) reads as follows:

§329-43.5 Prohibited acts related to drug paraphernalia.

(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

⁴HRS § 712-1249 (1993) reads as follows:

§712-1249 Promoting a detrimental drug in the third degree.

(1) A person commits the offense of promoting a detrimental drug in the third degree if the person knowingly possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor.

of trial, either at the close of the State's case or at the close of all evidence. State v. Hilongo, 64 Haw. 577, 579, 645 P.2d 314, 316 (1982). Assuming arguendo that Hatori's point was properly preserved for appeal, the circuit court did not abuse its discretion in denying Hatori's motion to sever. The circuit court did not allow any evidence that formed the basis of the search warrant and twice instructed the jury that the jury "must not consider the fact that a search warrant was issued in determining whether any of the defendants are guilty or not guilty of any of the offenses for which they are charged." The jury is presumed to have followed the court's instructions. State v. Jhun, 83 Hawai'i 472, 482, 927 P.2d 1355, 1365 (1996). Hatori fails to show that he was denied a fair trial; therefore, the circuit court did not abuse its discretion in denying Hatori's motion for severance. State v. Gaspar, 8 Haw. App. 317, 327-28, 801 P.2d 30, 35 (1990).

(2) Hatori contends that the circuit court erroneously permitted the introduction of "bad act" evidence, specifically evidence that "Hatori was the target of the search warrant, that the target residence was 87-130 St. John's Road and that based on the search warrant and the affidavit in support of the search warrant, the police believed that Hatori would be at 87-1230 [sic] St. John's Road on August 6, 1997." Hatori's contention is without merit. Hawai'i Rules of Evidence Rule 404(b) applies to

an act of a defendant. Hatori fails to identify any evidence of an act of his that the circuit court admitted. The circuit court disallowed the State from introducing any evidence supporting the probable cause that served as the basis for the search warrant. Additionally, the circuit court twice instructed the jury that they "must not consider the fact that a search warrant was issued in determining whether any of the defendants are guilty or not guilty of any of the offenses for which they are charged." It is presumed that the jury followed the court's instructions. State v. Jhun, supra.

(3) Hatori contends that there was insufficient evidence to support the conviction on Count I (Promoting a Dangerous Drug in the First Degree). Specifically, Hatori contends the record lacked substantial evidence to support a finding that there was more than one ounce of methamphetamine in the bedroom where Hatori was found. Honolulu Police Department drug analysis expert Hassan Mohammed's testimony was substantial evidence that the total amount of substance containing methamphetamine in State's Exhibits 1-6 weighed 28.840 grams, which is more than one ounce.

Considering this evidence in the strongest light for the State, we conclude there is substantial evidence to support the conclusion of the trier of fact. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998). The jury relied on

substantial evidence of a "sufficient quality and probative value to enable a person of reasonable caution to support a conclusion" as to every material element of the offense charged. State v. Jenkins, 93 Hawai'i 87, 101, 997 P.2d 13, 27 (2000) (internal quotation marks and brackets omitted). The jury found the testimony of the State's witnesses credible. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." Id. (internal quotation marks and brackets omitted) (quoting State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999)).

Therefore,

IT IS HEREBY ORDERED that the March 21, 2001 Judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, February 21, 2003.

On the briefs:

Keith S. Shigetomi
for defendant-appellant.

Chief Judge

Bryan K. Sano,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge