

NO. 24416

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
CURTIS A. MARTIN, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-1869)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Curtis A. Martin (Martin) appeals from the April 30, 2002 Amended Judgment¹ of the Circuit Court of the First Circuit (circuit court).² Pursuant to a jury trial, Martin was convicted, as charged, of Unauthorized Control of Propelled Vehicle, in violation of Hawaii Revised Statutes (HRS) § 708-836 (Supp. 2000), for "intentionally or knowingly exert[ing] unauthorized control over a propelled vehicle [moped], by operating the vehicle without the consent of John Carter, owner of said vehicle." Martin was sentenced pursuant to HRS § 706-606.5 (1993 & Supp. 2002) (Sentencing of Repeat Offender) to an indeterminate five-year term of incarceration with a mandatory minimum term of incarceration of one year and eight months.

Martin contends the circuit court erred in curtailing his ability to present a defense because (1) the circuit court

¹The Amended Judgment was filed to correct the incorrect police report number on the Judgment filed July 3, 2001.

²The Honorable Sandra A. Simms presided.

did not allow Martin's treating physician to testify about Martin's state of mind (specifically his ability to form the requisite intent), and (2) Martin was prevented from testifying as to whether he knew the moped was stolen.³

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 Martin' points of error as follows:

(1) The circuit court did not err by disallowing state of mind testimony by Dr. Buroker. The record indicates that Martin expressly waived the right to present an affirmative defense under HRS § 704-400 (1993).⁴ See State v. Klaufa, 73

³Martin's opening brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(3) in failing to include "[a] concise statement of the case, setting forth the nature of the case, the course and disposition of proceedings in the court . . . appealed from, and the facts material to consideration of the questions and points presented, with record references supporting each statement of fact or mention of court . . . proceedings." Additionally, Martin's opening brief does not comply with HRAP Rule 28(b)(7) in that Martin's argument does not contain "the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." Martin's counsel is warned that future non-compliance with HRAP 28 may result in sanctions against him.

⁴HRS § 704-400 (1993) provides:

§704-400 Physical or mental disease, disorder, or defect excluding penal responsibility. (1) A person is not responsible, under this Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect the person lacks substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform the person's conduct to the requirements of law.

(2) As used in this chapter, the terms "physical or mental disease, disorder, or defect" do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

Haw. 109, 116-17, 831 P.2d 512, 517 (1992) (testimony regarding whether or not a defendant possessed the requisite intent is only admissible under HRS § 704-404 when the defendant has alleged that a "physical or mental disease, disorder or defect" renders them incapable of forming the intent).

(2) Martin's claim that he was prevented from testifying as to whether he knew the moped was stolen is without merit. Martin testified that he purchased the moped from an unnamed acquaintance and he did not know the moped was stolen until he was pulled over by an Ala Moana security guard. Detective Jones testified that Martin stated to him during his questioning of Martin that vehicles with a "toggle switch" and a push button instead of a key may have something wrong with them and may be "possibly stolen."

Accordingly, the April 30, 2002, Amended Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 18, 2003.

On the briefs:

James C. Beaman
for defendant-appellant.

Chief Judge

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

Associate Judge

Associate Judge