

NOT FOR PUBLICATION

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NO. 24742

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
DOUGLAS EDWIN RYCHENER, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT  
(CR. NO. 01-1-0031)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Douglas Edwin Rychener (Rychener) appeals the November 20, 2001 Judgment of the Circuit Court of the Third Circuit (circuit court).<sup>1</sup> Rychener was charged by indictment with the following thirteen counts:

Count I: Place to Keep Firearms in violation of Hawaii Revised Statutes (HRS) § 134-6(d) (Supp. 2003);

Counts II, VIII, X, and XII: Ownership or Possession Prohibited in violation of HRS § 134-7(b) (Supp. 2003);

Count III: License to Carry a Firearm in violation of HRS § 134-9(c) (Supp. 2003);

Count IV: Promoting a Dangerous Drug in the Third Degree in violation of HRS § 712-1243(1) (1993 & Supp. 2001);

Counts V and VI: Prohibited Acts Relating to Drug Paraphernalia in violation of HRS § 329-43.5(a) (1993);

Counts VII, IX, XI, and XIII: Place to Keep Firearms in violation of HRS § 134-6(c) (Supp. 2003);

On April 30, 2001, Rychener filed a Motion to Suppress Evidence (Motion to Suppress). After a hearing, the circuit

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<sup>1</sup> The Honorable Ronald Ibarra presided.

court denied the Motion to Suppress and entered its Findings of Fact, Conclusions of Law; and Order Re: Defendant's Motion to Suppress Evidence (Order Denying Motion to Suppress) on June 4, 2001.

On September 26, 2001, Rychener entered, and the State consented to, a conditional plea of no contest to Counts I, II, IV, V, VI, VII, and VIII. Rychener reserved the right to appeal the denial of any pretrial motions and the Judgment and, if successful on his appeal, the right to withdraw the pleas. Rychener and the State agreed that Rychener was subject to a mandatory minimum term of imprisonment of three years and four months due to a previous felony conviction, and the circuit court agreed that all charges would run concurrently. The State agreed to dismiss with prejudice Counts III, IX, X, XI, XII, and XIII; the Motion for Nolle Prosequi with Prejudice was granted on December 14, 2001.

On September 26, 2001, the State filed its "Motion to Impose Mandatory Term of Imprisonment, Pursuant to Section 706-606.5(1), Hawaii Revised Statutes, as Amended." The State asked that a mandatory term of imprisonment of three years and four months be imposed. After a hearing on the motion, the circuit court granted the motion and sentenced Rychener to:

Counts I, II, and VIII: ten years of imprisonment with a mandatory minimum of three years and four months on each count; and

Counts IV, V, VI, and VII: five years of imprisonment on each count.

Pursuant to the plea agreement, Rychener was allowed to remain out on bail pending his appeal.

On appeal, Rychener contends the circuit court erred (1) in making Findings of Fact Nos. 5 and 14 in the Order Denying Motion to Suppress because these findings were not supported by the record of the case; (2) in making Conclusion of Law No. 5 in the Order Denying Motion to Suppress because this conclusion was not supported by the record of the case or by the law; (3) in denying the Motion to Suppress; and (4) by imposing a mandatory minimum term based on the circuit's court taking judicial notice of a criminal judgment not properly presented.<sup>2</sup>

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 as raised by the parties, we hold that:

(1) A review of the record indicates there was substantial evidence ("credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion") in support of the circuit

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<sup>2</sup> We note that section F of the State's Answering Brief contains errors in the dates of certain transcripts.

court's findings of fact and conclusions of law. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998);

(2) The Motion to Suppress was properly denied because it was permissible for the police officer to briefly stop and pat down Rychener for weapons as Rychener's suspicious conduct led the officer to conclude, in light of his experience, that criminal activity might "be afoot" and Rychener might have been armed and dangerous. Terry v. Ohio, 392 U.S. 1, 30-31, 88 S. Ct. 1868, 1884-85 (1968); and

(3) The circuit court properly applied the mandatory minimum sentence statute, HRS § 706-606.5 (Supp. 2003), because there was satisfactory evidence of Rychener's prior conviction. State v. Freitas, 61 Haw. 262, 278-80, 602 P.2d 914, 925-27 (1979).

Therefore,

IT IS HEREBY ORDERED that the November 20, 2001 Judgment of the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 15, 2004.

On the briefs:

Robert D.S. Kim  
for defendant-appellant.

Chief Judge

Cynthia T. Tai,  
Deputy Prosecuting Attorney,  
County of Hawai'i,  
for plaintiff-appellee.

Associate Judge

Associate Judge