

NO. 24974

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ROBERT APOLO HOLBRON, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 96-0494)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Robert Apolo Holbron (Holbron) appeals the Amended Judgment filed on February 7, 2002, in the Circuit Court of the First Circuit (circuit court).<sup>1</sup>

On appeal, Holbron contends the circuit court (1) erred by refusing to give the jury "Defendant's Proposed Instruction #3" (Holbron's JI No. 3); (2) erred by giving the jury the "State's Supplemental Instruction No. 10" (State's JI No. 10); (3) plainly erred by failing to give the jury a unanimity instruction; (4) erred by convicting him of multiple counts of Kidnapping, thereby violating his constitutional and statutory rights against double jeopardy; and (5) erred by sentencing him to an extended sentence.

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

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<sup>1</sup> The Honorable Sandra A. Simms presided.

the arguments advanced and the issues raised by the parties,<sup>2</sup> we resolve Holbron's points of error as follows:

(1) Holbron contends the circuit court erred by refusing to give the jury Holbron's JI No. 3. The circuit court did not err by refusing to give Holbron's proposed jury instruction because the instruction was an incorrect statement of law. State v. Young, 93 Hawai'i 224, 232, 999 P.2d 230, 238 (2000).

(2) Holbron contends the circuit court erred by giving the jury the State's JI No. 10 on self-induced intoxication because the instruction misled and confused the jury with respect to his insanity defense. The State's theory of the case was that Holbron was voluntarily intoxicated at the time of the incident because he took cocaine. The instruction on self-intoxication was proper because it was a correct statement of the law.

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<sup>2</sup>We note a number of problems with Holbron's Opening Brief and the State's Answering Brief:

Holbron's Opening Brief contains no Appendix "A" as set forth on page 13 of the brief. On page 20, the type size changes from 12 point to 10 point and continues in 10 point to the end of the brief, in non-compliance with Hawai'i Rules of Appellate Procedure (HRAP) Rule 32 (b). The footnotes throughout the brief and part of the Table of Authorities are also in 10 point type. In the future, defense counsel should move for leave to file a brief exceeding 35 pages in compliance with HRAP Rule 28(a).

The State's Answering Brief contains no Appendix "A" as set forth on page 1 of the brief. In footnote 1, the State claims that the 8/13/01 transcript of proceedings is not a part of the record on appeal and then offers specific testimony from that transcript. We note that the 8/13/01 transcript was filed on August 9, 2002 and is part of the Record on Appeal.

(3) Holbron contends the circuit court plainly erred when it instructed the jury on Hawaii Revised Statutes (HRS) § 707-720(1)(b) (1993) (Kidnapping). Holbron argues that HRS § 707-720(1)(b) allows the jury to find that a defendant committed two culpable acts, and, therefore, in accordance with State v. Arceo, 84 Hawai'i 1, 928 P.2d 843 (1996), the State must specifically select which act it relied on to convict Holbron or the court must give a unanimity instruction on both acts. Arceo is inapplicable to this case because the element that Holbron complains about is not a "conduct" element. HRS § 707-720(1)(b).

(4) Holbron contends that convicting him of multiple counts of Kidnapping is contrary to the double jeopardy prescriptions of the United States and Hawai'i Constitutions. Holbron's convictions for Kidnapping do not violate his constitutional and statutory rights against double jeopardy because the issue was previously decided. State v. Holbron, 92 Hawai'i 628, 994 P.2d 560 (1999) (Memorandum Opinion in S. Ct. No. 21265).

(5) Holbron contends that his extended sentence under HRS § 706-662(4) (1993) violates his Fifth, Sixth, and Fourteenth Amendment rights under Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000). Extended term sentences pursuant to HRS § 706-662(4)(a) fall outside the Apprendi rule and do not violate

Holbron's constitutional rights. State v. Kaua, 102 Hawai'i 1, 13, 72 P.3d 473, 485 (2003).

Therefore,

IT IS HEREBY ORDERED that the Amended Judgment filed on February 7, 2002, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 11, 2004.

On the briefs:

Jacob Merrill  
(Donald L. Wilkerson on  
the Opening Brief)  
for defendant-appellant.

Chief Judge

Loren J. Thomas,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for plaintiff-appellee.

Associate Judge

Associate Judge