

NO. 25069

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
BRANDON LIZARDO, Defendant-Appellant,
and JOSEPH POOMAIHEALANI and
JOHN POOMAIHEALANI, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-1714)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Brandon Lizardo (Lizardo) appeals from the Judgment filed on April 17, 2002 in the Circuit Court of the First Circuit (circuit court).¹

On appeal, Lizardo contends (1) the circuit court reversibly erred in failing to sever his case from that of his co-defendants, Joseph and John Poomaihealani, and (2) the circuit court reversibly erred in allowing the jury to hear evidence that Lizardo had possessed a gun at Krazy Karaoke because the relevance of such evidence was substantially outweighed by the danger of unfair prejudice and misleading the jury.

Upon careful review of the record and the briefs submitted by the parties, we hold:

(1) The circuit court's denials of Lizardo's three oral motions to sever were not abuses of discretion because

¹ The Honorable Wilfred K. Watanabe presided.

Lizardo failed to fulfill his burden under State v. Timas, 82 Hawai'i 499, 511, 923 P.2d 916, 928 (App. 1996), of proving that he was denied a fair trial. Since this court concludes Lizardo was not denied a fair trial, it may not conclude Lizardo suffered prejudice from a joint trial. State v. Gaspar, 8 Haw. App. 317, 327, 801 P.2d 30, 35 (1990); and

(2) The circuit court did not abuse its discretion by allowing Sergeant Gratton to testify that Lizardo had possessed a gun at Krazy Karaoke because the testimony was relevant to the Terroristic Threatening in the First Degree charge and it was unlikely the jury was misled or confused by the testimony. State v. Duncan, 101 Hawai'i 269, 273-74, 67 P.3d 768, 772-73 (2003).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on April 17, 2002 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 28, 2004.

On the briefs:

David McCormick
for defendant-appellant.

Chief Judge

Mark Yuen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge