

**NOT FOR PUBLICATION**

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NO. 25079

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
PHILLIP L. POLA, Defendant-Appellant,  
and  
SIDNEY F. TAFOKITAU and MIKAELE FATAI, JR., Defendants

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 01-1-1251)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Phillip L. Pola (Pola) appeals the Judgment filed on April 5, 2002 in the Circuit Court of the First Circuit (circuit court).<sup>1</sup>

Pola was charged with and convicted of Counts VII through XII, Robbery in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 708-840(1)(b)(ii) (1993 & Supp. 2003).<sup>2</sup>

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<sup>1</sup>The Honorable Richard K. Perkins presided.

<sup>2</sup>Hawaii Revised Statutes (HRS) § 708-840 (1993 & Supp. 2003) provides in relevant part:

**§708-840 Robbery in the first degree.** (1) A person commits the offense of robbery in the first degree if, in the course of committing theft:

- . . . .
- (b) . . . . The person is armed with a dangerous instrument and:
  - . . . .
  - (ii) The person threatens the imminent use of force against the person of anyone who is present with

(continued...)

On appeal, Pola contends the circuit court erred by (1) denying Pola's motion to suppress evidence, (2) admitting evidence of a gun and knife, (3) admitting evidence as an exception to the hearsay rule under Hawaii Rules of Evidence (HRE) Rule 802.1(3), (4) providing the jury with inconsistent or misleading jury instructions, and (5) denying his oral motions for judgment of acquittal.

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 Pola's points of error as follows:

(1) Pola contends the circuit court erred by not suppressing the evidence found during the search of a backpack. The circuit court's finding that Pola abandoned the backpack when he placed it into a dumpster located in an alley is not clearly erroneous. The circuit court did not err by denying Pola's motion to suppress evidence because "[o]ne has no standing to

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<sup>2</sup>(...continued)

intent to compel acquiescence to the taking of or escaping with the property.

(2) As used in this section, "dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

(3) Robbery in the first degree is a class A felony.

complain of a search of property he has voluntarily abandoned." State v. Mahone, 67 Haw. 644, 648, 701 P.2d 171, 175 (1985).

(2) Pola contends the circuit court erred by admitting into evidence a gun and knife found in a van because they were irrelevant. The circuit court did not err by admitting the gun and knife into evidence because the gun and knife were part of the State's case that Pola and his co-defendants intended to use a dangerous weapon or firearm in the commission of a robbery or that it was the defendants who actually possessed a gun or knife during the robbery. State v. Silva, 67 Haw. 581, 586, 698 P.2d 293, 297 (1985).

(3) Pola contends the hearsay testimony of Officer Gapusan was inadmissible because HRE Rule 802.1(3) requires the declarant of a statement to also verify its accuracy at trial. There is no requirement that a declarant vouch for the accuracy of a hearsay statement attributed to the declarant in order to qualify as an exception to hearsay under HRE Rule 802.1(3). State v. Tafokitau, No. 25075, 2004 WL 541841, at \*8 (Hawai'i App. March 19, 2004).

(4) Pola contends the jury should not have been instructed on accomplice liability or, in the alternative, that the accomplice liability instructions were misleading and

confusing. Several witnesses testified that three men, acting together, robbed them. Therefore, it was not error to submit an instruction on accomplice liability because there was evidence on which to base such an instruction, although such evidence "may be slight and inconclusive, or opposed to the preponderance of the evidence." State v. Tucker, 10 Haw. App. 73, 80, 861 P.2d 37, 42 (1993). The circuit court did not err by instructing the jury on accomplice liability because the jury instructions, when read together as one connected whole, correctly declared the law and were not inconsistent or misleading. State v. Yip, 92 Hawai'i 98, 113, 987 P.2d 996, 1011 (App. 1999).

(5) Pola contends the State failed to produce substantial evidence that he wielded a knife and thus failed to prove every element of Robbery in the First Degree. There was sufficient evidence adduced at trial for the trier of fact to conclude that Pola committed Robbery in the First Degree by using a knife. Several witnesses testified that a man holding a bag and knife forced them to place their money into the bag or forcibly took their money and placed it into the bag. A witness testified that Pola was the man who had a backpack that contained his stolen wallet. The witness's wallet and \$5,858 were found in Pola's abandoned backpack.

Therefore,

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IT IS HEREBY ORDERED that the Judgment filed on April 5, 2002 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 25, 2004.

On the briefs:

Dwight C.H. Lum  
for defendant-appellant.

Acting Chief Judge

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

Associate Judge

Associate Judge