

NOT FOR PUBLICATION

NO. 25497

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DARREN KAWAA, also known as Darren Silva, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR NO. 00-01-0013)

SUMMARY DISPOSITION ORDER

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

Darren Kawaa, also known as Darren Silva, (Kawaa) appeals from the October 30, 2002 Judgment, entered by the First Circuit Court¹, convicting him of Murder in the Second Degree, Hawaii Revised Statutes (HRS) §§ 707-701.5 (1993) and 706-656 (Supp. 2003), and sentencing him to life imprisonment with the possibility of parole, and a mandatory minimum prison term of fifteen (15) years. We affirm.

Kawaa's sole point of error on appeal is that "[t]he lower court erred when it denied over objection of the Defense for the jury to be instructed on the lesser emotional disturbance manslaughter instruction."

Upon meticulous 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 Kawaa's point of error as follows:

¹ Unless otherwise stated, the Honorable Sandra A. Simms presided.

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The trial court properly refused to give the extreme mental or emotional disturbance (EMED) instruction. "Under [HRS] § 707-702(2) [(1993)],² it is a defense which reduces the offense from murder to manslaughter, if the defendant was, at the time of the offense, (1) under an 'extreme mental or emotional disturbance'; (2) for which there was a 'reasonable explanation.'" State v. Kaiama, 81 Hawai'i 15, 25, 911 P.2d 735, 745 (1996). The Kaiama court explained that

[t]he first prong of the test focuses on the defendant's reaction to the stress, and requires only that the defendant be under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation.

To satisfy the second prong . . . i.e., a reasonable explanation, the defendant must satisfy a subjective/objective test. The circumstances must be viewed as the defendant believed them to be (subjective), however, the ultimate test . . . is objective. There must be a reasonable explanation for the actor's disturbance.

Id. at 25-26 (citations, brackets, and internal quotation marks omitted).

In State v. Sawyer, the Hawai'i Supreme Court concluded that it is for the trial court to determine

whether or not the record reflects *any* evidence of a subjective nature that the defendant acted under a loss of self control resulting from extreme mental or emotional disturbance. If the record does not reflect *any* such evidence, then the trial court

² The full text of Hawaii Revised Statutes § 707-702(2) (1993) states:

In a prosecution for murder in the first and second degrees it is a defense, which reduces the offense to manslaughter, that the defendant was, at the time he caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believed them to be.

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shall properly refuse to instruct the jury on EMED manslaughter. However, if the record reflects any evidence of a subjective nature that the defendant acted under the influence of extreme mental or emotional disturbance, then the issue must be submitted to the jury, and the trial court should instruct the jury on EMED manslaughter.

88 Hawai'i 325, 333, 966 P.2d 637, 645 (1998) (emphasis in original).

In Kawaa's case, the record is void of any evidence that Kawaa was suffering from extreme mental or emotional distress the night his three-week-old daughter Angel Saludaes (Angel) died of fatal head injuries. On the contrary, Kawaa consistently testified that he never lost his temper around Angel, that he loved it when Angel cried, and that he was not stressed the night Angel died. Moreover, none of the other witnesses at trial provided evidence indicating that Kawaa suffered from emotional distress at any time.

As the Hawai'i Supreme Court has stated, "It is insufficient for a criminal defendant merely to allege that he or she was experiencing emotional distress at the time of the charged offense." State v. Perez, 90 Hawai'i 65, 74, 976 P.2d 379, 388 (1999). "[W]here evidentiary support for the asserted defense, or for any of its essential components, is clearly lacking, it would not be error for the trial court either to refuse to charge on the issue or to instruct the jury not to consider it." State v. Moore, 82 Hawai'i 202, 210, 921 P.2d 122, 130 (1996) (citation omitted). The trial court did not err in

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refusing to give the EMED instruction.

Therefore,

IT IS HEREBY ORDERED that the October 30, 2002 Judgment is affirmed.

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

On the briefs:

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu
for Plaintiff-Appellee.

Chief Judge

Chester M. Kanai
for Defendant-Appellant.

Associate Judge

Associate Judge