

NOT FOR PUBLICATION

NO. 26101

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CONNIE M. ARAGONA, Defendant-Appellant
(CR. NO. 01-1-1876)

and

STATE OF HAWAI'I, Plaintiff, v.
CARL DEPIETROPAOLO, aka CARL DEPIETROPAOLO, JR., Defendant
(CR. NO. 01-1-2013)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

Connie M. Aragona (Defendant) appeals the August 22, 2003 judgment of the Circuit Court of the First Circuit (circuit court)¹ that convicted her, upon a jury's verdict, of extortion in the second degree, robbery in the first degree, kidnapping and theft in the second degree.

After a sedulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve Defendant's points of error on appeal as follows:

1. In denying Defendant's June 16, 2003 motion for new trial, the circuit court did not abuse its discretion, State v. Furutani, 76 Hawai'i 172, 178-79, 873 P.2d 51, 57-58 (1994), because

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STATE OF HAWAI'I

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The Honorable Michael A. Town presided.

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(a) the prosecutor's preface to his closing argument -- a Power Point quotation and audio clip of Marlon Brando's iconic ironic from the movie The Godfather ("I'll make him an offer he can't refuse.") -- was otiose and trite, but nevertheless not prosecutorial misconduct, cf. State v. Kupihea, 80 Hawai'i 307, 317, 909 P.2d 1122, 1132 (1996) ("scenarios posed by the prosecutor were not represented as being anything other than hypothetical and were confined to the law on which the jury would be instructed"); see also People v. Hryshko, 427 N.W.2d 572, 578 (Mich. Ct. App. 1988) (prosecutor's comparison of a meeting in a restaurant to "a scene from the Godfather" during closing arguments in a bribery case was "[n]o error requiring reversal" (block quote format omitted)); or, if exceptionable, harmless beyond a reasonable doubt, State v. Sanchez, 82 Hawai'i 517, 528, 923 P.2d 934, 945 (App. 1996);² and

(b) the prosecutor's allusion during closing argument to favorable evidence not presented was cured when the circuit court immediately sustained Defendant's objection and instructed the jury to disregard the allusion. State v. McGriff, 76 Hawai'i 148, 160, 871 P.2d 782, 794 (1994) ("a prosecutor's improper remarks are considered cured by the court's instructions

² In this connection, we observe that Defendant Connie M. Aragona's defenses of choice of evils and duress depended upon the same ominous threat of armed violence the prosecutor alluded to in making reference to The Godfather. The only difference was that the State alleged Defendant solicited the thugs to commit the offenses, whereas she argued that the thugs coerced her to commit the offenses.

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to the jury, because it is presumed that the jury abided by the court's admonition to disregard the statement" (citation and internal quotation marks omitted)).

2. In denying Defendant's oral motion for mistrial without questioning the jurors, the circuit court did not abuse its discretion, State v. Loa, 83 Hawai'i 335, 349, 926 P.2d 1258, 1272 (1996), because "it can be shown that the jury could not have been influenced by the alleged misconduct." State v. Williamson, 72 Haw. 97, 103, 807 P.2d 593, 596 (1991) (citation omitted)).

Therefore,

IT IS HEREBY ORDERED that the August 22, 2003 judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, August 15, 2005.


On the briefs:

Shawn A. Luiz,
for Defendant-Appellant.

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Corinne K. A. Watavale

Acting Chief Judge


Associate Judge

Genevieve R. Foley
Associate Judge