

NOT FOR PUBLICATION

NO. 26214

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RENE S. GABRIEL, Defendant-Appellant

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2005 JUN 17 AM 7:50

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 01-1-2374)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Rene S. Gabriel (Gabriel) appeals from the Judgment filed on September 9, 2003, in the Circuit Court of the First Circuit (circuit court).^{1/} A jury found Gabriel guilty of Promoting a Dangerous Drug in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (1993 and Supp. 2001),^{2/} based on his possession of crack cocaine. Gabriel was sentenced to imprisonment of five years with a mandatory minimum term of one year and eight months as a repeat offender.

^{1/} The Honorable Karl K. Sakamoto presided.

^{2/} Hawaii Revised Statutes (HRS) § 712-1243 (1993 and Supp. 2001) provides in relevant part as follows:

§712-1243 Promoting a dangerous drug in the third degree. (1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount.

On appeal, Gabriel argues that the circuit court erred in 1) admitting other "bad act" evidence against Gabriel; and 2) failing to place adequate limits on the jury's consideration of the "bad act" evidence in the court's instructions to the jury. After a careful review of the record and the briefs submitted by the parties, we conclude that Gabriel's arguments have no merit.

I.

Gabriel had numerous prior encounters with Officer Russell Pereira, who was involved in Gabriel's October 14, 2001, arrest that led to the present prosecution. Gabriel contended that Officer Pereira had harassed Gabriel in the past, harbored a grudge against Gabriel, and was biased against Gabriel. In support of these claims, Gabriel introduced evidence that on October 7, 2001, Officer Pereira had arrested Gabriel for possession of cocaine and drug paraphernalia, but that the State of Hawai'i (the State) declined to file charges against Gabriel. In response, the circuit court permitted the State to introduce evidence that on September 9, 2001, Officer Gabriel had arrested Gabriel and found marihuana in his possession.

Gabriel contends that the circuit court erred in admitting evidence of the September 9, 2001, incident. We disagree. Gabriel opened the door to this evidence by claiming that Officer Pereira was biased against Gabriel and by

introducing evidence of the October 7, 2001, incident. Evidence of the September 9, 2001, incident was admissible under Rule 404(b) of the Hawaii Rules of Evidence (HRE) to show the context of the relationship between Officer Pereira and Gabriel, a matter Gabriel placed in issue. State v. Clark, 83 Hawai'i 289, 301, 926 P.2d 194, 206 (1996). The evidence also served to rebut Gabriel's contention that Officer Pereira's arrest of Gabriel in the instant case was simply part of a pattern of harassment by showing that the officer had valid reasons to be concerned about Gabriel. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. HRE Rule 403.

II.

Although the circuit court refused the instruction proposed by Gabriel, it gave the jury a limiting instruction regarding the jury's consideration of the "bad act" evidence. The court's instruction placed adequate limits on the jury's consideration of the "bad act" evidence. We reject Gabriel's claim that the circuit court's jury instruction was prejudicially insufficient. State v. Kelekolio, 74 Haw. 479, 514-15, 849 P.2d 58, 74 (1993).

III.

IT IS HEREBY ORDERED that the Judgment filed on September 9, 2003, in the Circuit Court of the First Circuit is affirmed.

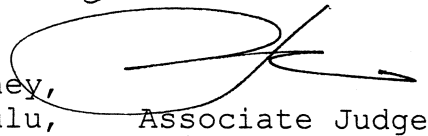
DATED: Honolulu, Hawai'i, June 17, 2005.

On the briefs:

Keith S. Shigetomi, Esq.
for Defendant-Appellant.


Chief Judge

Mark Yuen,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Associate Judge


Associate Judge