

**NOT FOR PUBLICATION**

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NO. 26456

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

STATE OF HAWAI'I, Plaintiff-Appellee, v. DEREK LUNA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CR. NO. 02-1-0620(1))

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Nakamura and Fujise, JJ.)

Defendant-Appellant Derek Luna ("Luna") appeals from the February 18, 2004 Judgment of the Circuit Court of the Second Circuit<sup>1</sup> convicting him of Promoting a Dangerous Drug in the First Degree (Count III), a violation of Hawaii Revised Statutes (HRS) § 712-1241(1)(b)(ii)(A), and Prohibited Acts Related to Drug Paraphernalia (Count IV), a violation of HRS § 329-43.5(a).

Upon careful review of the record and the arguments of the parties, this court resolves the issues raised by Luna as follows:

(1) There was substantial evidence supporting Luna's conviction as the government presented testimony establishing Luna as the individual conducting the drug and paraphernalia transactions in question. Luna's challenge to this evidence is essentially an attack upon the credibility of the witnesses,

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<sup>1</sup> The Honorable Joel E. August presided.

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which is for the jury and not this court to decide. State v. Jenkins, 93 Hawai'i 87, 101, 997 P.2d 13, 27 (2000).

(2) The record does not support Luna's allegations of prosecutorial misconduct. The examples to which Luna points are illustrative of, if anything, non-responsive answers to unobjectionable questions posed by the prosecutor.

Therefore,

IT IS HEREBY ORDERED that the circuit court's February 18, 2004 Judgment is affirmed.

DATED: Honolulu, Hawai'i, March 9, 2005.

On the briefs:

Keith E. Tanaka,  
for Defendant-Appellant.

Acting Chief Judge

Peter A. Hanano,  
Deputy Prosecuting Attorney,  
County of Maui,  
for Plaintiff-Appellee.

Associate Judge

Associate Judge