

NO. 26064

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

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STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee/Cross-Appellant, v.  
ROBERT K. ADAMS, Defendant-Appellant/Cross-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CR. NO. 01-1-0545(1))

MEMORANDUM OPINION

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

Defendant-Appellant/Cross-Appellee Robert K. Adams (Adams) appeals from the Judgment filed on August 13, 2003, in the Circuit Court of the Second Circuit (circuit court).<sup>1</sup> Plaintiff-Appellee/Cross-Appellant State of Hawai'i (the State) cross-appeals from the circuit court's "Findings of Fact, Conclusions of Law, and Order Precluding Use of Defendant's Involuntary Statements," filed on July 17, 2003.

Adams was charged by indictment with Reckless Endangering in the First Degree (Count 1), Terroristic Threatening in the First Degree (Count 2), Criminal Property Damage in the Fourth Degree (Count 3), and Failure to Acquire a Firearm Permit (Counts 4 and 5). Prior to trial, the circuit court granted the State's motion to dismiss Count 2. After a jury trial, Adams was found guilty of Reckless Endangering in the

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

First Degree (Reckless Endangering I), a violation of Hawaii Revised Statutes (HRS) § 707-713(1) (1993),<sup>2</sup> as charged in Count 1. The jury returned a special verdict finding that the firearm used in committing the Reckless Endangering I offense was a semi-automatic firearm. The jury found Adams not guilty of Counts 3, 4, and 5.

Pursuant to HRS § 706-660.1(3)(d) (1993), the State filed a motion seeking the imposition of a mandatory minimum five-year term of imprisonment without the possibility of parole based on Adams's use of a semi-automatic firearm while committing the Reckless Endangering I offense. The circuit court granted the motion and sentenced Adams to five years' imprisonment without the possibility of parole.

On appeal, Adams argues that the circuit court erred in: 1) failing to determine that Adams "was not competent at the time of the incident which led to the charges in this case"; 2) refusing to give Adams's proposed instruction relating to nonself-induced intoxication; and 3) failing to grant Adams's motion to dismiss the Reckless Endangering I charge at the close of the State's case. The State cross-appeals, arguing that the

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<sup>2</sup> Hawaii Revised Statutes (HRS) § 707-713(1) (1993) provides in relevant part as follows:

A person commits the offense of reckless endangering in the first degree if the person . . . intentionally fires a firearm in a manner which recklessly places another person in danger of death or serious bodily injury.

circuit court erred in ruling that statements made by Adams to the police were involuntary.

BACKGROUND

A. The State's Case-In-Chief

On September 15, 2001, at about 5:00 a.m., residents of Noholani Street on Maui were awakened by gunshots. The gunshots came from the house at 7 Noholani Street, where Adams lived with a woman named Carrie Welsh (Welsh). Adams's neighbors on Noholani Street described hearing between five and nine gunshots coming from Adams's residence.

Maui Police Department (MPD) Officers Reid Nakamura (Officer Nakamura) and Paul Takayama (Officer Takayama) were dispatched to Noholani Street to investigate a report of gunshots being fired. They arrived at Noholani Street shortly after 5:00 a.m. and saw residents outside their homes pointing at Adams's house. The officers announced their presence and approached the house with caution, with Officer Takayama taking the lead. Welsh called out that everything was "fine." Officer Takayama asked Welsh for permission to enter the house and Welsh responded by opening the door.

Upon entering the house, Officer Takayama saw Adams sitting on the floor in a hallway with a .22 caliber semi-automatic rifle across his lap. Adams was loading .22 caliber ammunition into a tubular magazine attached to the rifle.

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Ammunition was scattered around Adams on the floor. Officer Takayama ran to Adams, knocked him over, and took the rifle away. The rifle was loaded with 19 rounds of ammunition.

Officer Nakamura attended to Adams after Officer Takayama secured the rifle. Adams initially did not acknowledge Officer Nakamura's presence and had what the officer described as "the hundred yard stare." Adams, however, complied with Officer Nakamura's request that Adams stand up and move to the living room couch. After Adams was arrested, Adams told Officer Nakamura that Adams was a Vietnam veteran and was taking medication for Post Traumatic Stress Disorder. Adams directed Officer Nakamura to a countertop where approximately ten bottles of medication were located, and Adams identified the medication he needed. Officer Nakamura transported Adams to the Wailuku police station and then, after conferring with the desk sergeant, to Maui Memorial Medical Center. An emergency room doctor examined Adams for five to ten minutes and released him back into police custody.

In addition to the .22 caliber semi-automatic rifle taken from Adams, Officer Takayama recovered a pump action shotgun that was retrieved by Welsh from Adams's bedroom. During the evening on September 15, 2001, MPD Detective David Medeiros (Detective Medeiros) went to Adams's residence. Welsh gave

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Detective Medeiros a box containing .22 caliber ammunition as well as four live and four spent shotgun shells.

Damage circumstantially linked to the gunshots fired by Adams was discovered in areas surrounding his home. Apparent bullet holes were found in the side of a pickup truck parked in front of Adams's house and in a box in the truck's bed. Bruno Hernando (Hernando) and his wife lived at 8 Noholani Street in a house directly across from Adams's house. Hernando testified that when he heard the shots, he told his wife to hit the ground because he feared the bullets would go right through his plantation-style house. After the shots were fired, Hernando noticed that a concrete base to one of his garage poles had been chipped.

Hernando's house was separated from the house owned by his neighbor, Ralph Taylor (Taylor), at 6 Noholani Street by 12 feet. Taylor was not on Maui and his house was unoccupied when the shots were fired. After the shots were fired, Taylor's neighbors discovered that lumber on the wall of Taylor's house was splintered and an outdoor shower located between Hernando's house and Taylor's house was damaged. There was a large propane tank situated between the Hernando and Taylor houses for Taylor's heater and stove. Damage apparently caused by the gunshots was discovered near the propane tank. Hernando testified that he was concerned that if a shell hit the propane tank, "it would blow

up." A check of the propane tank after the shots were fired revealed that the tank contained gas. The house on the other side of Taylor's house from Hernando was occupied by five people at the time of the shootings.

Detective Medeiros testified that a bullet breaks apart at impact, leaving metal remnants. Detective Medeiros found metal fragments beyond the propane tank, near the outdoor shower, near a van parked in front of the Taylor house, in front of the Taylor house, and on Noholani Street itself.

B. The Defense Case

Adams testified in his own defense. Adams testified that he had been in the Navy and had served in Vietnam from 1967 through 1969. On September 11, 2001, Adams watched television coverage of the terrorist attacks on the World Trade Center and the Pentagon. The images he saw reminded him of Vietnam. One of the planes hijacked by the terrorists crashed near Sommerset, Pennsylvania, where Adams had family. Adams was in a state of "readiness and alert." He believed that "we were going to war" and that the terrorist attacks marked the "start of the war."

In preparing for the war, Adams took a shotgun and a rifle out of his bedroom closet, loaded the rifle, and put both guns against his living room wall. Adams claimed that both guns belonged to a homeless friend who had asked Adams to hold the guns but had not returned to retrieve them. Adams stated that

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after the terrorist attacks, he could not sleep, he watched television for four days straight, and he was "really anxious."

Adams claimed that in the afternoon on September 14, 2001, while he was working on a car outside his residence, he was approached by a local male who demanded money. Adams described the male as five feet nine inches tall, 190 to 200 pounds, with a big build. The male said that Adams owed the male money and threatened to kill Adams if Adams did not pay. Adams stated that he had never seen the male before in his life. The male left after Adams said he was going to call the police if the male did not leave. Adams did not report the incident to the police.

Adams stated that on September 14, 2001, he was taking the following prescribed medications: Triazodone to help him sleep and for depression, Oxycontin for neck and back pain arising from a 1997 car accident, and Inderal for high blood pressure. The Oxycontin, which Adams was taking three times a day, contained warnings against driving or using heavy equipment. Adams took Triazodone in the evening on September 14th, but it was not working because Adams had been unable to sleep since the terrorist attacks. The anxiety caused by the events of September 11 and Adams's being "on alert" prevented him from sleeping.

Adams testified that at about 5:00 a.m. on September 15, 2001, he was sitting on his living room couch

watching television. The house was well lit as lights in the kitchen, livingroom, and bathroom were on. According to Adams, the same male who threatened Adams the day before entered the house carrying a gun. The male was yelling at Adams and threatening him. Adams jumped off the couch and grabbed the .22 caliber rifle he had previously loaded. Adams emerged from around a corner and pointed the rifle in the male's face. The male turned and ran out of the house. Adams testified that he went to a window and fired five rounds into the top of a large mango tree in his yard to scare the male away. Adams denied aiming the rifle at the male or at anyone's house.

Adams stated that he was in fear for his life because the male intruder had a gun. Adams testified that as a result of his encounter with the intruder, Adams went into a state of shock. He sat down on the floor in a daze and stayed there until the police arrived.

#### DISCUSSION

##### A.

Prior to trial, the parties stipulated that Adams would undergo a mental examination to determine whether he was "fit to proceed for criminal proceedings" and whether he met the requirements for an insanity defense under HRS § 704-400 (1993). All three examiners concluded that Adams was competent to proceed to trial. The examiners were divided on whether Adams was insane



at the time of the charged offenses with two concluding that Adams met the statutory definition for insanity and one concluding that he did not. The record indicates that Adams decided not to rely on an insanity defense. The circuit court later granted the State's motion that Adams undergo an additional mental examination to determine whether he was suffering from a mental disease, disorder, or defect that would have affected his ability to have the state of mind required to establish an element of the charged offenses. The same three examiners were appointed. Consistent with their opinion regarding the insanity defense, two concluded that Adams did not have the capacity to form the state of mind required for the charged offenses, while one found that he did.

Adams argues that the circuit court erred in failing to determine that he "was not competent at the time of the incident which led to the charges in the case." Adams's arguments are confusing because they conflate the concepts of insanity, diminished capacity, and competency to proceed to trial. As best as we can tell, Adams claims that the circuit court erred in allowing him to "proceed to trial on the offenses as charged" either because he was incompetent to proceed or was insane at the time of the offense. Alternatively, Adams contends that the court erred in failing to instruct the jury on diminished capacity. We conclude that Adams's claims are without merit.

On the question of competency for trial, all three examiners concluded that Adams was fit to proceed. By allowing the proceedings to go forward after receiving the examiners' reports, the circuit court implicitly found that Adams was competent. Adams did not contest the examiners' conclusion that he was fit to proceed or request a hearing on the issue under HRS § 704-405 (1993).

Insanity is an affirmative defense. HRS § 704-402 (1993). Adams made an apparent strategic decision not to rely on the defense of insanity. The choice on whether to rely on the insanity defense was for Adams to make, not for the circuit court. The circuit court did not err in allowing Adams to proceed to trial on the charged offenses.

Under Hawai'i law, there is no diminished capacity defense that is separate from the insanity defense. State v. Klaufa, 73 Haw. 109, 117, 831 P.2d 512, 517 (1992). The jury was properly instructed on the state of mind required for the offense of Reckless Endangering I. Adams did not call any mental experts or request an instruction on diminished capacity. The circuit court did not err in failing, sua sponte, to instruct on diminished capacity. Id.; State v. Baker, 67 Haw. 471, 473-75, 691 P.2d 1166, 1168-69 (1984).

B.

Adams proposed the following jury instruction on nonself-induced or pathological intoxication, which was patterned after HRS § 702-230 (1993):<sup>3</sup>

Evidence of the nonself-induced or pathological intoxication of the Defendant was admitted into evidence during the trial. Evidence of nonself-induced or pathological intoxication of the defendant is admissible to prove or negative the conduct alleged or the state of mind sufficient to establish an element of the offenses of Reckless Endangering in the First Degree and Terroristic Threatening in the First Degree.

"Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

"Self-induced intoxication" means intoxication caused by substances which the defendant knowingly introduces into the defendant's body, the tendency of which to cause intoxication the defendant knows or ought to know, unless the defendant introduces

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<sup>3</sup> HRS § 702-230 (1993) provides in relevant part as follows:

(1) Self-induced intoxication is prohibited as a defense to any offense, except as specifically provided in this section.

(2) Evidence of the nonself-induced or pathological intoxication of the defendant shall be admissible to prove or negative the conduct alleged or the state of mind sufficient to establish an element of the offense. Evidence of self-induced intoxication of the defendant is admissible to prove or negative conduct or to prove state of mind sufficient to establish an element of an offense. Evidence of self-induced intoxication of the defendant is not admissible to negative the state of mind sufficient to establish an element of the offense.

(5) In this section:

(a) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(b) "Self-induced intoxication" means intoxication caused by substances which the defendant knowingly introduces into the defendant's body, the tendency of which to cause intoxication the defendant knows or ought to know, unless the defendant introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of a penal offense;

(c) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and which results from a physical abnormality of the defendant.

them pursuant to medical advice or under such circumstances as would afford a defense to a charge of a penal offense.

"Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and which results from a physical abnormality of the Defendant.

At the conference to settle jury instructions, Adams's counsel stated he had no objection to modifying the proposed instruction by deleting the references to pathological intoxication.<sup>4</sup>

On appeal, Adams contends that the circuit court erred in refusing to give, over Adams's objection, the portion of Adams's proposed instruction relating to nonself-induced intoxication. We disagree.

The evidence presented at trial did not support the giving of a nonself-induced intoxication instruction. See State v. Moore, 82 Hawai'i 202, 210-11, 921 P.2d 122, 130-31 (1996). There was no evidence that any medication Adams consumed resulted in his "intoxication" or in the impairment of his mental capacity. Adams did not testify that the medication he consumed had any effect on him. Nor did he offer testimony by any expert that the medication he took could have affected his mental capacity or judgment. We conclude that the circuit court did not err in refusing to give an instruction on nonself-induced intoxication or, alternatively, that any error in failing to give such an instruction was harmless beyond a reasonable doubt given

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<sup>4</sup> The reference in the proposed instruction to Terroristic Threatening in the First Degree was rendered moot by the dismissal of that charge before trial.

the dearth of evidence supporting the nonself-induced intoxication theory.

C.

At the close of the State's case-in-chief, Adams moved for a judgment of acquittal on the Reckless Endangering I charge. Adams argued that while the evidence presented may have been sufficient to support a charge of Reckless Endangering in the Second Degree (Reckless Endangering II), in violation of HRS § 707-714 (1993),<sup>5</sup> it was insufficient to support the Reckless Endangering I charge. Adams therefore argued that the jury should only be allowed to consider a charge of Reckless Endangering II. The circuit court denied Adams's motion. Adams proceeded to present evidence in his own defense and did not renew his motion for judgment of acquittal after all parties rested.

On appeal, Adams argues that the circuit court erred in denying his motion for judgment of acquittal at the close of the State's case. Adams waived this claim by presenting evidence

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<sup>5</sup> HRS § 707-714 (1993) provides in pertinent part as follows:

(1) A person commits the offense of reckless endangering in the second degree if the person engages in conduct which recklessly places another person in danger of death or serious bodily injury.

(2) For the purpose of this section and in addition to other applications, a person engages in conduct which recklessly places another person in danger of death or serious bodily injury when that person intentionally discharges a firearm in a populated area, in a residential area or within the boundaries or in the direction of any road, street or highway. . . .

after the circuit court denied his motion for judgment of acquittal. State v. Pudiquet, 82 Hawai'i 419, 423, 922 P.2d 1032, 1036 (App. 1996). Adams, moreover, did not renew his motion after all parties had rested. Nevertheless, we may still review whether there was sufficient evidence to support Adams's conviction under the plain error doctrine. State v. Mitsuda, 86 Hawai'i 37, 38 n.3, 947 P.2d 349, 350 n.3 (1997).

We reject Adams's contention that there was insufficient evidence to support his Reckless Endangering I conviction. Adams argues that because his conduct satisfied the requirements for Reckless Endangering II, he should have been charged with that offense instead of Reckless Endangering I.<sup>6</sup> Adams's argument is unpersuasive. The fact that Adams's conduct met the requirements for Reckless Endangering II does not mean that there was insufficient evidence to support his conviction for Reckless Endangering I.

Adams also argues that there was insufficient evidence that he recklessly placed another person in danger of death or serious bodily injury, as required to establish the Reckless Endangering I offense, because "the State could not point to a

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<sup>6</sup> Proof of the intentional discharge of a firearm in a populated or residential area, without more, is sufficient to establish the offense of Reckless Endangering in the Second Degree. HRS § 707-714(2). The offense of Reckless Endangering in the First Degree requires proof of an additional element, namely, that the intentional firing of the firearm was done in a manner which recklessly placed another person in danger of death or serious bodily injury. HRS § 707-713(1).

single person who was specifically endangered." We disagree. Adams fired multiple gunshots in a residential neighborhood where the houses were built close together. Burno Hernando and his wife, who lived directly across from Adams, were home during the shootings. The evidence showed that one of Adams's gunshots hit the concrete base to Bruno Hernando's garage. Damage from gunshots were found near a large propane tank on the premises of Hernando's neighbor, Ralph Taylor, including damage to an outdoor shower and the splintering of a wooden wall of the Taylor house. The propane tank was within 12 feet of Hernando's house. In addition, five people occupied the home on the other side of the Taylor house at the time of the shootings. When viewed in the light most favorable to the State, there was sufficient evidence that Adams recklessly placed another person, namely, his neighbors, in danger of death or serious bodily injury.

THE STATE'S CROSS-APPEAL

Because we affirm Adams's conviction and sentence, we need not address the State's cross-appeal of the circuit court's "Findings of Fact, Conclusions of Law, and Order Precluding Use of Defendant's Involuntary Statements," which the court filed on July 17, 2003.

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CONCLUSION

The Judgment of conviction and sentence filed on August 13, 2003, in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 25, 2006.

On the briefs:

Artemio C. Baxa,  
Deputy Prosecuting Attorney  
County of Maui on Amended  
Cross-Appeal Opening Brief  
(Glenn Pesenhofer,  
Deputy Prosecuting Attorney  
County of Maui on Answering  
Brief)

Josette Anne Wallace,  
for Defendant-Appellant/  
Cross-Appellee



Acting Chief Judge



Associate Judge



Associate Judge