

NO. 26173

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
LAMAAR RICHARDSON, also known as Lamaar  
Silva, Defendant-Appellant,  
and  
EVAN KAKUGAWA, JASON YOSHIMURA, BRANDEN KAKUGAWA,  
and DON CABINIAN, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 01-1-2624)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Lamaar Richardson, also known as  
Lamaar Silva, (Richardson) appeals from the Judgment filed on  
September 23, 2003 in the Circuit Court of the First Circuit  
(circuit court).<sup>1/</sup> A jury found Richardson guilty of:

Count I: Murder in the Second Degree, in violation of  
Hawaii Revised Statutes (HRS) §§ 707-701.5 (1993) and  
706-656 (1993 & Supp. 2005); and

Count II: Assault in the First Degree, in violation of  
HRS § 707-710 (1993).

The circuit court sentenced Richardson to concurrent terms of  
life imprisonment with the possibility of parole on Count I and  
ten years of imprisonment on Count II. The circuit court also

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<sup>1/</sup> The Honorable Marie N. Milks presided.

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ordered Richardson to pay a free-standing order of restitution in the amount of \$10,869.05 on Count I, jointly and severally with his co-defendants, and to pay restitution on Count II with the Hawaii Paroling Authority to determine the amount, manner, and method of payment of the restitution. The circuit court waived its ordered \$1,000 Crime Victim Compensation Fee due to Richardson's inability to pay.

On appeal, Richardson argues that: (1) the circuit court abused its discretion by denying his motion to strike the panel of prospective jurors after the State had generated several sustained objections for improper argument and used examples closely related to the facts of the case to illustrate accomplice liability; and (2) he was denied effective assistance of counsel because his counsel, at trial, (a) advised Richardson not to testify and then ineffectively cross-examined various State witnesses, (b) made arguments in which he failed to highlight favorable facts and elicited damaging facts, and (c) failed to object to improper questions asked by the State.

Upon careful review of the record and the briefs submitted by the parties, we hold that:

(1) The State's questions regarding Jurassic Park, piranhas, school yard fights, and a brawl between football players at a University of Hawai'i versus Cincinnati football game did not concern subjects about which the local community or

the population at large is commonly known to harbor strong feelings, i.e., a proper subject for voir dire. Therefore, the State was obligated to lay a foundation by showing that its questions were reasonably calculated to discover an actual and likely source of prejudice. State v. Altergott, 57 Haw. 492, 500-02, 559 P.2d 728, 734-35 (1977).

(2) Nevertheless, this court will not disturb the circuit court's denial of Richardson's motion to strike the jury panel because Richardson has not demonstrated that he was prejudiced thereby. State v. Churchill, 4 Haw. App. 276, 279, 664 P.2d 757, 760 (1983).

(3) There is an inadequate record to address Richardson's points of error regarding his claims of ineffective assistance of counsel, based on his counsel's alleged failure, at trial, (a) to advise Richardson to not testify, (b) to effectively cross-examine various State witnesses, (c) to object to improper questions asked by the State, and (d) to make arguments highlighting favorable facts and eliciting damaging facts.

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on September 23, 2003 in the Circuit Court of the First Circuit is affirmed without prejudice to Richardson's filing a Hawai'i Rules of Penal Procedure Rule 40 petition on his ineffectiveness of

counsel claim. State v. Silva, 75 Haw. 419, 441-45, 864 P.2d 583, 593-95 (1993).

DATED: Honolulu, Hawai'i, March 29, 2006.

On the briefs:

Mary Ann Barnard  
for Defendant-Appellant.

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

  
Chief Judge

  
Associate Judge

  
Associate Judge