

NOT FOR PUBLICATION

NO. 26255

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

STATE OF HAWAI'I, Plaintiff-Appellee, v  
CLINTON VINCENT, Defendant-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 01-1-1482)

MEMORANDUM OPINION

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

Defendant-Appellant Clinton Vincent (Vincent) appeals from the Judgment filed on November 26, 2003, in the Circuit Court of the First Circuit (circuit court).<sup>1</sup> Plaintiff-Appellee State of Hawai'i (the State) charged Vincent by complaint with abuse of a family or household member, in violation of Hawaii

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<sup>1</sup> The Honorable Michael D. Wilson presided.

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Revised Statutes (HRS) § 709-906 (Supp. 1999)<sup>2</sup> (Count I);  
violation of an order for protection, in violation of HRS  
§§ 586-5.5 (Supp. 1998) and 586-11 (Supp. 1999)<sup>3</sup> (Counts II and  
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<sup>2</sup> Hawaii Revised Statutes (HRS) § 709-906 (Supp. 1999) provides in relevant part:

It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member . . . . For the purposes of this section, "family or household member" means spouses . . . former spouses . . . and persons jointly residing or formerly residing in the same dwelling unit.

<sup>3</sup> HRS § 586-5.5 (Supp. 1998) provides in relevant part:

(a) If after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for such further period as the court deems appropriate, not to exceed three years from the date the protective order is granted.

The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. . . .

III); assault in the second degree, in violation of HRS § 707-711(1)(d) (1993)<sup>4</sup> (Count IV); attempted assault in the first degree, in violation of HRS §§ 705-500 and 707-710 (1993)<sup>5</sup> (Count V); kidnapping, in violation of HRS § 707-720(d) or (e) (1993)<sup>6</sup> (Count VI); and assault against a police officer, in

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HRS § 586-11 (Supp. 1999) provides in relevant part:

(a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor.

<sup>4</sup> HRS § 707-711(1)(d) (1993) provides in relevant part:

A person commits the offense of assault in the second degree if:

(d) The person intentionally or knowingly causes bodily injury to another person with a dangerous instrument[.]

<sup>5</sup> HRS § 705-500 (1993) provides in relevant part:

(1) A person is guilty of an attempt to commit a crime if the person:

(b) Intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

HRS § 707-710 (1993) provides in relevant part:

(1) A person commits the offense of assault in the first degree if the person intentionally or knowingly causes serious bodily injury to another person.

<sup>6</sup> HRS § 707-720 (1993) provides in relevant part:

(1) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

.....

violation of HRS § 707-712.5(1)(a)(1993)<sup>7</sup> (Count VII). The complaining witness (CW) in Counts I through VI was Vincent's ex-wife. After a jury trial, Vincent was found guilty as charged on all counts. The circuit court sentenced Vincent to concurrent terms of imprisonment of twenty years on Count VI, ten years on Count V, five years on Count IV, and one year on each of Counts I, II, III, and VII.

On appeal, Vincent argues that the circuit court erred in: 1) admitting evidence pursuant to Hawaii Rule of Evidence (HRE) Rules 404(b) and 403 that Vincent stated that he did not want to go back to jail during his alleged assault and kidnapping of the CW; 2) refusing to declare a mistrial based on questions relating to domestic violence that the Deputy Prosecuting Attorney (DPA) asked during jury selection; and 3) refusing to declare a mistrial when the DPA, in his opening statement and without a prior voluntariness hearing, referred to Vincent telling the police that he "did not want to go back to jail" during hostage negotiations. We affirm.

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- (d) Inflict bodily injury upon that person or subject that person to a sexual offense; [or]
  - (e) Terrorize that person or a third person[.]

<sup>7</sup> HRS § 707-712.5(1)(a) (1993) provides:

- (1) A person commits the offense of assault against a police officer if the person:
  - (a) Intentionally, knowingly, or recklessly causes bodily injury to a police officer who is engaged in the performance of duty[.]

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### BACKGROUND

The CW had been married to Vincent for ten years before they were divorced in February 2001. The CW had two sons, Austin and Joshua, from a prior relationship. On October 18, 2000, the CW obtained an Order for Protection against Vincent, which required Vincent to immediately vacate their residence and prohibited him from contacting the CW. On November 29, 2000, the Order for Protection was amended to permit Vincent to visit the CW's minor son, as mutually agreed upon by the CW and Vincent, and to contact the CW to arrange for such visits. The Order of Protection, as amended (the Protection Order), remained in effect until November 29, 2001. Despite the Protection Order, Vincent continued to live with the CW and her two sons at an apartment in Kuhio Park Terrace (KPT).

The CW testified that on June 25, 2001, she and Vincent got into an argument. Vincent kicked her in the leg, leaving a large bruise. The next day, the CW called Vincent at work and told him she was going to the doctor because of the bruise. Vincent, who worked at night, returned home from work at about 1:30 a.m. on June 27, 2001. Vincent argued with the CW, telling her that he could lose his job because she kept calling him at work. Because the CW "had it already" with Vincent, she called the police to report that Vincent had violated the Protection Order. Vincent left the apartment after the CW called the

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police. The CW gave a written statement to the police then returned to her apartment and went to sleep.

Later, Austin, the CW's older son, woke the CW up to tell her that Vincent had come back to the apartment. Vincent was angry. The CW testified that Vincent told her that he was "not going back to jail." The CW tried to calm Vincent down but he got angrier. The CW told Vincent she was going back to sleep, and then she went to her bedroom and fell asleep. She awoke to find Vincent on top of her, holding a soldering iron to her face. Vincent used the soldering iron to burn the CW's left and right cheeks. While doing so, he told the CW that he was "not goin' go jail."

The CW screamed for help. Austin came to the bedroom, confronted Vincent, and demanded, "What are you doing to my mom?" Vincent responded that it was "none of [Austin's] business." Vincent got off the CW and she moved to the side of the bed. Vincent then punched her in the mouth. Vincent left the bedroom, and the CW did the same a short time later with the intent of fleeing from the apartment. As the CW tried to leave, Vincent came at her fast and stabbed her in the stomach with a black object. The CW, bleeding, retreated to her sons' bedroom. Vincent followed her into the bedroom, locked the door, and barricaded the door with weights and other items.

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The CW sat on her son's bed and did not attempt to leave because she was afraid Vincent might stab or injure her again. The police arrived and tried to talk Vincent into letting the CW go, but Vincent refused. During his standoff with the police, Vincent held a dumbbell by the CW's head and also held a multi-purpose tool that had a knife blade. The police subsequently broke into the room, grabbed the CW, and removed her from the room.

Austin testified that Vincent was angry when he returned from work in the early morning on June 27, 2001. Vincent and the CW started arguing. Vincent left after the CW called the police, but Vincent later returned. Austin heard Vincent say to the CW, "[W]hy you call the cops. Why you do this. Now I have to do something. I not going back to jail." Later, Austin heard his mother screaming and ran to her bedroom. Austin saw Vincent burning the CW's face with a soldering iron. Austin grabbed the soldering iron from Vincent, took it into the hallway, and broke it. Austin called the police and told his brother, Joshua, to watch their mother. When Joshua called out that Vincent was hitting the CW and holding a knife, Austin ran to the kitchen to get a knife. Austin went back to his mother's room and saw Vincent hitting her and holding a knife. Austin demanded that Vincent drop the knife, and Vincent complied. Austin picked up the knife and took it to the kitchen. He

returned to his mother's bedroom and took a second knife away from Vincent.

Austin left the apartment to find some friends that could help him make Vincent leave the apartment. Because of the early morning hour, Austin could not find anyone to help him. When Austin returned, the CW told Austin she had been stabbed. Austin saw Vincent follow the CW into Austin's bedroom and shut the door.

Joshua's testimony corroborated the basic details provided by Austin. Joshua stated that he was awakened by his mother's screams. He went to the CW's room and saw Vincent on top of the CW holding a soldering iron and a knife. Joshua saw Austin take the soldering iron and knife away from Vincent. Joshua testified that when the CW left her bedroom, Vincent stabbed the CW in the stomach with a utility-tool knife. Vincent and the CW then went into the boys' bedroom.

Honolulu Police Department (HPD) Officers Oryn Baum and Dominic Llacunna testified that on June 27, 2001, at about 1:30 a.m., they met with the CW at KPT and took her complaint that Vincent had violated the Protection Order. The officers responded to a call from the CW's apartment about three hours later. When they arrived at the apartment, Austin stated that Vincent was stabbing their mother and directed the officers to the closed bedroom where Vincent was holding the CW. Officer



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Baum testified that she could hear a male yelling and a female screaming. Officer Baum asked Vincent if he would release the CW, but Vincent refused. After about ten minutes, other officers arrived, including Officer Brad Beck who took over the negotiations with Vincent.

Officer Beck testified that Vincent was acting erratically, alternating between yelling and talking normally. Vincent refused to open the door, but gave Officer Beck permission to punch a hole in the pressboard above the door so the officer could see into the bedroom. Standing on a chair, Officer Beck could see the CW lying on a bed. The CW was curled up, holding her stomach area, which was bleeding, and she appeared to be in fear and in pain. Vincent was pacing back and forth, looked angry, and was swinging a dumbbell around like a club. The door was locked and barricaded with a weight bench, weights, speakers, furniture, a chair, and other items.

At one point, when the police tried to open the door, Vincent became "wild," grabbed a multi-purpose tool with its knife blade out, and sat next to the CW on the bed. Officer Beck calmed Vincent down and Vincent moved away from the CW. While conversing with Officer Beck, Vincent stated, "I know I going jail already, I'm -- I went punch her in the face, I went punch her in the ribs, I went stab her, they goin' -- you goin' take me to jail, you might as well shoot me, kill me already."

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Eventually, Vincent agreed to permit Officer Beck to enter the room. Vincent put down the dumbbell he was holding when Officer Beck agreed to put away his baton. They shook hands and Vincent initially agreed to allow Officer Beck to handcuff him. Vincent, however, pulled back when he saw other officers entering the room. As Vincent fell backward against a couch, he kicked Officer Beck in the groin and picked up the dumbbell and swung it at the officer. Several officers jumped on Vincent and subdued him.

Officer Llacunna saw the CW while she was being treated at the apartment by emergency medical technicians. The CW was crying and appeared frightened. The CW stated that Vincent had "stabbed her, punched her, and burned her with a soldering iron."

The CW was taken to the emergency room at Queen's Hospital where she was treated by Dr. Christine Gebrowsky. Dr. Gebrowsky testified that the CW had first and second degree burns, abrasions, and contusions on her face and a stab wound to her abdomen. Dr. Gebrowsky described the stab wound as a "deep wound" that was near the CW's liver, intestines, and colon. The CW later suffered a hernia as a result of the stab wound that required surgery to repair. The CW told Dr. Gebrowsky that her ex-husband had hit her on the face, burned her with an iron, and stabbed her with a knife. The State introduced photographs taken

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at the hospital which depicted the injuries to the CW's face and a large bruise on her leg.

Vincent, who testified at trial, had a starkly different version of what had happened. Vincent testified that when he returned home from work on June 27, 2001, the CW was in a "grouchy mood" and argued with him. Vincent left the apartment because the CW said she was calling the police and Vincent did not want to get arrested or go to jail. Later, Vincent returned to the apartment. He decided to fix something so he plugged his soldering iron into an extension cord near the livingroom couch where the CW was sleeping. Vincent stated that the CW woke up and must have kicked the extension cord as she walked away from him. This, Vincent claimed, caused the soldering iron to go flying toward the CW and burn her on both sides of her face. Vincent stated that he heard the CW scream and he jumped over the couch to help her. In the meantime, the CW had somehow picked up a multi-purpose tool with its knife blade out. Vincent testified that the CW ran into him, causing the knife portion of the tool to stab the CW in the stomach.

According to Vincent, the CW then ran into the boys' bedroom. He followed her in to put a sheet on the stab wound to stop the bleeding. Within a minute, the police arrived. Vincent denied barricading the door. Instead, Vincent stated that he pushed a weight bench to the side when entering the room to help

the CW and that the bench happened to end up obstructing the door. Vincent also testified that he repeatedly urged the police to come into the room to help the CW, but they stayed outside. Eventually, the police opened the door and "rushed" him. Vincent denied kicking Officer Beck in the groin. He stated that in the struggle to avoid the officers' choking him and breaking his arm, his arm hit Officer Beck in the groin.

The jury began its deliberations at about 12:30 p.m. on May 23, 2003. Within three hours, the jury returned verdicts of guilty on all counts.

DISCUSSION

I.

Prior to trial, the State notified Vincent of its intent to introduce evidence that Vincent repeatedly stated to the CW and the police that he did not want to go back to jail. Vincent objected to the admission of this evidence as unduly prejudicial. Vincent also argued that a voluntariness hearing was necessary to the extent that Vincent made the statement to police officers. The circuit court ruled that the evidence was admissible under HRE Rule 404(b) to show Vincent's intent and the lack of mistake. The court further ruled that the probative value of the evidence outweighed its prejudicial effect.

On appeal, Vincent argues that the circuit court erred in admitting evidence that he stated that he did not want to go back to jail under HRE Rules 404(b) and 403. We disagree.

HRE Rule 404(b), in relevant part, provides:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible where such evidence is probative of any other fact that is of consequence to the determination of the action, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, modus operandi, or absence of mistake or accident.

HRE Rule 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Decisions to admit evidence under HRE Rules 404(b) and 403 are reviewed for abuse of discretion. State v. Richie, 88 Hawai'i 19, 37, 960 P.2d 1227, 1245 (1998).

Evidence that Vincent stated he did not want to go back to jail was part of the res gestae and was direct evidence of the charged offenses. Moreover, it was admissible under HRE Rule 404(b) to show Vincent's strong motive and intent in committing the charged offenses. Vincent's statement that he did not want to go back to jail explained the source of his anger at the CW and why he burned and stabbed her. It also explained why Vincent barricaded himself and the CW in the bedroom and refused to come out. Vincent's statement became even more relevant in light of his defense, which his counsel articulated before trial and

during opening statement, that the injuries to the CW were the result of a freak accident. Vincent's statement served to refute his "accident" defense.

The circuit court gave instructions limiting the jury's consideration of Vincent's statement to the purposes permitted by HRE Rule 404(b) after the CW's testimony and in its final charge to the jury. These instructions, which the jury is presumed to have followed, State v. Klinge, 92 Hawai'i 557, 592, 994 P.2d 509, 524 (2000), diminished any unfair prejudice flowing from Vincent's statement. We conclude that the circuit court did not abuse its discretion in admitting evidence that Vincent stated he did not want to go back to jail.

II.

During jury selection, the following colloquy took place between the DPA and a prospective juror:

Q: Any concerns about domestic violence?

A: Not personally or any close relative.

Q: Nothing close. You've heard like co-worker?

A: I've heard of people, read about it.

Q: More the reading, did in your reading?

A: Uh-huh.

Q: In your experience is it we'll say hypothetically, --

A: Uh-huh.

Q: -- the woman --

A: Uh-huh.

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- Q: -- is the victim of domestic abuse, domestic violence, typically in your reading, does the woman leave immediately or does she stay in the relationship?
- A: She stays.
- Q: Why do you think that is?
- A: I wouldn't know; but, I believe there's two sides to every story. I wouldn't be able to say why without knowing her unless I knew the reasons.
- Q: Right.
- A: Both sides.
- Q: Do you think that we can understand one time she gets hit she might stay?
- A: Uh-huh.
- Q: Two times maybe she really believes in the guy. Three, four times you're thinking like boy, she's stupid. Why is she staying in that relationship.
- A: Right.
- Q: She leaves after the third time. Does she just deserve what she gets? Do we just like throw up our hands?
- A: Again, again, there could be some other reasons behind of staying. I wouldn't know unless I knew what the reasons were.
- Q: Right.
- A: You know, her children, security, financial.
- Q: Uh-huh.
- A: I wouldn't know. I'd have to read -- I'd have to know the reason.
- Q: Okay. You wouldn't be so much judging --
- A: No.
- Q: -- interactions, but, motivations as well?
- A: I don't make rash judgments. I would have to -- like, I say, two sides to every story.
- Q: We'll say the full story.
- A: The full story.
- Q: Very good.

At the end of this colloquy, Vincent's counsel approached the bench and asked for a mistrial, arguing that the DPA's hypothetical created an inference that Vincent had abused the CW on prior occasions. The circuit court ruled:

All right, I think that was a comment on the evidence. Defendant's objection is made. I would have to sustain. I don't think this constitutes a reason for mistrial. I think [the prospective juror] appears to be very open minded she can listen to the evidence.

On appeal, Vincent claims that the circuit court erred in denying his motion for mistrial because "[t]he prosecution played on the emotions of the jury by improperly raising inflammatory (sic) domestic violence scenarios during *voire dire* which was designed to inflame the passions of the jury and deprive Vincent of a fair trial."

We review allegations of prosecutorial misconduct under the harmless beyond a reasonable doubt standard,

which requires an examination of the record and a determination of whether there is a reasonable possibility that the error complained of might have contributed to the conviction. Factors to consider are: (1) the nature of the conduct; (2) the promptness of a curative instruction; and (3) the strength or weakness of the evidence against the defendant.

State v. Klinge, 92 Hawai'i at 590, 994 P.2d at 522 (2000)

(internal quotation marks and citations omitted). "The denial of a motion for mistrial is within the sound discretion of the trial court and will not be upset absent an abuse of discretion." Id. at 584, 994 P.2d at 516.

Assuming, arguendo, that the DPA's voir dire questions amounted to misconduct, we conclude that it was harmless beyond a



reasonable doubt. The anticipated trial evidence included evidence that the CW continued to live with Vincent after obtaining the Protection Order against him and that the CW failed to promptly report Vincent's assault on June 25, 2001. Thus, the DPA had a valid reason for attempting to determine whether the prospective juror would be inclined to blame the CW for failing to terminate her relationship with Vincent. The DPA's voir dire questions were posed in the form of a hypothetical thereby obscuring any direct link between the questions and Vincent's case.

The circuit court instructed the jury during the trial that statements or remarks of counsel were not evidence and that the jury must decide the case only on the evidence presented at trial. The jury is presumed to have followed these instructions. Klinge, 92 Hawai'i at 592, 994 P.2d at 524. In addition, not only was the State's case against Vincent overwhelming, but his testimony that the CW's injuries were accidental was incredible. Under these circumstances, the DPA's brief, hypothetical reference to a domestic violence victim staying in a relationship after repeated abuse was harmless beyond a reasonable doubt. The circuit court did not err in denying Vincent's motion for a mistrial based on the DPA's voir dire questions.

III.

After the circuit court announced its pretrial ruling that Vincent's statement that he did not want to go back to jail was admissible, Vincent's counsel asked the court to reserve its ruling until a voluntariness hearing was held. In response, the circuit court indicated that it would reserve ruling on the admissibility of Vincent's statement pending a voluntariness hearing to the extent that Vincent made the statement to the police rather than the CW. The court stated:

With respect to the statements that were made to the police, if this is one of those statements, that's fine. It turns out that it was an involuntary statement for some reason, I haven't heard the facts as to how it was uttered, we'll make a determination at that time.

It's my understanding the statement that was made to the complaining witness as well.

During the State's opening statement, the DPA stated:

[The CW] realizes she was stabbed. She goes to the boys' room back in the apartment to get help from the boys. She doesn't know that Austin left to get friends and the other boy Joshua was in the living room. She doesn't see him. She just goes into the empty room. He follows. He barricades the door. We have a barricade hostage situation now.

The police arrive. They hear the screaming. They go in there. They try to negotiate with him. Let her go, let her go. No. No. She's ruined my life. I don't want to go back to jail. No.

Finally, one officer Brad Beck negotiated basically saying let me just go in there and check. Let me go into the room and check to see if she's okay.

(Emphasis added.)

After the DPA completed his closing argument, Vincent moved for a mistrial, arguing that the DPA had violated the circuit court's pretrial ruling. Vincent noted that the circuit

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court had permitted the State to refer to the don't-want-to-go-back-to-jail statement Vincent made to the CW, but not to the statement he made to the police until after a voluntariness hearing. The DPA responded that he believed he could refer to what Vincent had said about not wanting to go back to jail because it went to Vincent's motive and intent. The DPA also indicated that he did not believe a voluntariness hearing was required because Vincent's statement was part of the crime. The circuit court denied the mistrial motion.

At trial, the State called Austin and the CW before any police officers testified. Both Austin and the CW testified that Vincent told the CW that he was "not going back to jail." Prior to Officer Beck's testimony, Vincent's counsel repeated his request for a voluntariness hearing before Vincent's statement to police officers that he was not going back to jail was elicited. The DPA argued that no voluntariness hearing was required because the statement was made during the crime itself in the midst of the hostage negotiations; the statement was made prior to any arrest; and there was no interrogation. The DPA, however, stated that the State would defer to the circuit court.

The circuit court ruled:

All right. The request is denied for voluntariness hearing. I think a voluntariness hearing is where there's a statement made by the defendant who's in custody and there's a determination needed as to whether the statement was voluntary or a result of questioning. As I understand it, this is -- this witness will testify about what happened before he was taken into custody.

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During his subsequent testimony, Officer Beck did not actually say that Vincent stated he did not want to go back to jail. Rather Officer Beck testified that during the hostage negotiations, Vincent said, "I know I going jail already."

On appeal, Vincent argues that the circuit court erred in not declaring a mistrial based on the DPA's opening-statement reference to Vincent telling the police that he did not want to go back to jail when no voluntariness hearing had yet been held. Vincent notes that "a defendant's incriminating statements must be deemed to be voluntary in order to comport with notions of constitutional fairness before being admitted into evidence." He further cites HRS § 621-26 (1993), which provides that "[n]o confession shall be received in evidence unless it is first made to appear to the judge before whom the case is being tried that the confession was in fact voluntarily made."

We conclude that the DPA's premature reference to Vincent's statement to the police does not provide a valid reason to overturn Vincent's convictions. In determining that a voluntariness hearing was not necessary, the circuit court implicitly found that Vincent's statement to the police -- that he did not want to go back to jail -- was voluntary.<sup>8</sup> The record fully supports this implicit finding. The record demonstrates

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<sup>8</sup> We do not address the State of Hawai'i's argument that the statement made by Defendant-Appellant Clinton Vincent to the police during the hostage negotiations was not a "confession" within the meaning of HRS § 621-26 (1993).

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that Vincent made the statement during his commission of the charged crimes at a time when he was not under arrest or being interrogated. Indeed, Vincent did not proffer any evidence in the court below and does not argue on appeal that any statements he made to the police during the hostage negotiations were coerced or involuntary.

More importantly, any error in the DPA's opening-statement reference to what Vincent told the police was harmless beyond a reasonable doubt. Both the CW and Austin testified that Vincent had stated that he did not want to go back to jail. The DPA's reference to Vincent making the same statement to the police was merely cumulative of evidence properly admitted at trial. See State v. Crisostomo, 94 Hawai'i 282, 290, 12 P.3d 873, 881 (2000); State v. Pauline, 100 Hawai'i 365, 378, 60 P.3d 306, 328 (2002). In addition, the evidence of Vincent's guilt at trial, even without evidence of what he told the police, was overwhelming. Accordingly, there was no reasonable possibility that any impropriety in the DPA's opening statement or in the admission of any statement Vincent made to the police might have contributed to his convictions. State v. White, 92 Hawai'i 192, 198, 205, 990 P.2d 90, 96, 103 (1999).


CONCLUSION

The Judgment filed on November 26, 2003, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 27, 2006.


On the briefs:

Shawn A. Luiz,  
for Defendant-Appellant.



Acting Chief Judge

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



Associate Judge



Associate Judge