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NO. 27019

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 DEC 11 AM 9:16

FILED

In the Interest of John DOE,
Born on January 19, 1988

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-J NO. 0067322, REF. NO. I05-048)

SUMMARY DISPOSITION ORDER
(By: Burns, Chief Judge, Nakamura, and Fujise, JJ.)

Minor-Appellant John Doe (Minor) appeals from 1) the October 29, 2004, "Decree Re: Law Violation Petitions" (Decree) and 2) the November 24, 2004, "Order Denying Minor's Motion to Reconsider, Alter or Amend a Judgment or Order" (Order Denying Motion to Reconsider) that were filed in the Family Court of the Second Circuit (family court).[1] The family court found Minor to be a law violator within the purview of Hawaii Revised Statutes (HRS) § 571-11(1) (1993)[2] for committing, as an accomplice, the

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[1] The Honorable Barclay E. MacDonald presided.

[2] Hawaii Revised Statutes (HRS) § 571-11(1) (1993) provides:

> Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:
>
> (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state, or local law or municipal ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred.

offense of Assault in the Second Degree (Assault II), in violation of HRS § 707-711(1)(b) (1993).[3] The victim of the alleged assault was a security guard for Maui Community College. The family court placed Minor on probation until his eighteenth birthday. As a special condition of Minor's probation, the family court ordered that he be confined to the Hawai'i Youth Correction Facility for an indeterminate period not to exceed 360 days, but stayed all but 60 days of that confinement.

At trial, the family court admitted in evidence two separate statements that Minor made to Maui Police Department (MPD) Officer Stuart Kunioka (Officer Kunioka). Officer Kunioka testified that after Minor was placed in a police vehicle, Minor spontaneously stated that "he was the only one involved" (hereinafter referred to as the "first statement"). According to Officer Kunioka, after Minor was verbally informed of his constitutional rights, Minor gave a more detailed account of his encounter with the security guard (hereinafter referred to as the "second statement"). Officer Kunioka was permitted to testify about what Minor said in the second statement, including Minor's statement that "the security guard struck [Minor] first with the flashlight and then this is when they started to fight and fell

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[3] HRS § 707-711(1)(b) provides:

> (1) A person commits the offense of assault in the second degree if:
>
> . . . .
>
> (b) The person recklessly causes serious bodily injury to another person[.]

down to the ground."

On appeal Minor argues that the family court erred in: 1) admitting the first statement because the first statement was the product of a custodial interrogation, and no prior Miranda warnings have been given; 2) admitting the second statement because the State of Hawai'i (the State): a) failed to show that Minor was given the warnings applicable to juveniles pursuant to Hawai'i Family Court Rules (HFCR) Rule 142 (2006)[4] and b) failed to lay a proper foundation that Minor had waived his rights; and 3) admitting the first statement and the second statement without a prior determination that the statements were voluntary. Minor further argues that there was insufficient evidence to show that he had committed the offense of Assault II as an accomplice.

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

1. Minor's first statement was not given in response to any questioning by the police, but rather was a spontaneous statement volunteered by Minor. Because the first statement was

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[4] Hawai'i Family Court Rules (HFCR) Rule 142 (2006) provides:

> No extra-judicial statement by the child made as a result of a custodial interrogation by a police officer shall be admitted into evidence absent a showing that required warnings of the child's constitutional rights were given the child in a meaningful way; that the child was informed of the child's right to have the child's parents or other adult present during any custodial interview; that any waiver of said rights was express and made with understanding; and that the statement itself was made voluntarily and without coercion or suggestion. In determining the admissibility of an extra-judicial statement, attention shall be given to the totality of circumstances in giving the warnings and obtaining the statement, including an examination into compliance with the provisions of HRS section 571-31.

not the product of interrogation, no prior Miranda warnings were required. State v. Ikaika, 67 Haw. 563, 566-67, 698 P.2d 281, 283-85 (1985); State v. Naititi, 104 Hawai'i 224, 235-38, 87 P.3d 893, 904-07 (2004). We thus reject Minor's claim that the first statement should have been excluded due to the absence of prior Miranda warnings.

We also reject Minor's argument that the family court violated HRS § 621-26 (1993) in failing to determine the voluntariness of the first statement before admitting it in evidence. HRS § 621-26 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." In this case, prior to admitting the first statement, the family court heard evidence that the first statement had been spontaneously made by Minor. The family court implicitly found that the first statement was voluntary in admitting the statement over Minor's objection that an inadequate foundation had been laid as to the voluntariness of the statement. Because this was a bench trial, the family court was not required to hold a separate voluntariness hearing.

2. HFCR 142 provides, in relevant part:

> No extra-judicial statement by the child made as a result of a custodial interrogation by a police officer shall be admitted into evidence absent a showing that required warnings of the child's constitutional rights were given the child in a meaningful way; that the child was informed of the child's right to have the child's parents or other adult present during any custodial interview; that any waiver of said rights was express and made with understanding; and that the statement itself was made voluntarily and without coercion or suggestion.

(Emphasis added.) Minor's second statement was obtained as the

result of a custodial interrogation by the police. We conclude that the State failed to show, as required by HFCR Rule 142, that Minor was informed of his right to have his parents or other adult present during the interview. On this point, the State only elicited Officer Kunioka's testimony that in advising Minor of his rights, Officer Kunioka read from an MPD form that contained a section pertaining to juveniles. However, the State did not introduce the MPD form into evidence. In addition, Officer Kunioka never described the contents of the section pertaining to juveniles or stated that he had informed Minor of his right to have his parents or other adult present during the interview. We therefore conclude that the family court erred by admitting Minor's second statement into evidence.[5]

We further conclude, however, that the error in admitting Minor's second statement was harmless beyond a reasonable doubt. The second statement was inculpatory only in the sense that it provided evidence that Minor had been involved in the assault. However, Minor's first statement, which was properly admitted, already contained Minor's admission that he had been involved in the assault. The second statement was therefore cumulative of the first statement. See State v. Chrisostomo, 94 Hawai'i 282, 290, 12 P.3d 873, 881 (2000). The

[5] In light of our conclusion that the Family Court of the Second Circuit (family court) erred in admitting the second statement of Minor-Appellant John Doe (Minor) under HFCR Rule 142, we do not reach Minor's additional claims that the family court erred in admitting the second statement because: 1) a proper foundation that Minor had waived his rights had not been laid and 2) the court had not made a prior determination that the second statement was voluntary.

family court's statements in denying Minor's motion for judgment of acquittal and in finding that Minor committed the offense of Assault II as an accomplice do not indicate that the second statement played any role in the court's decisions. We hold that there was no reasonable possibility that the erroneous admission of the second statement might have contributed to the family court's finding that Minor had committed the offense of Assault II as an accomplice. See State v. White, 92 Hawai'i 192, 198, 205, 990 P.2d 90, 96, 103 (1999).

3. Without considering the second statement, we conclude that there was ample evidence to show that Minor committed the offense of Assault II as an accomplice. Damon Kerry (Kerry) testified that he grabbed and detained the person he saw punching the security guard and turned that person over to the police. The testimony of the police officers who responded to the scene established that Minor was the person that Kerry had detained. Minor also admitted his involvement in the assault in his spontaneous first statement to the police. We therefore reject Minor's insufficiency of evidence claim.

IT IS HEREBY ORDERED that: 1) the October 29, 2004, "Decree Re: Law Violation Petition" and 2) the November 24, 2004, "Order Denying Minor's Motion to Reconsider, Alter or Amend a

Judgment or Order" that were filed in the Family Court of the Second Circuit are affirmed.

DATED: Honolulu, Hawai'i, December 11, 2006.

On the briefs:

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for Minor-Appellant

Artemio C. Baxa,
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County of Maui
for Plaintiff-Appellee

James A. Burns
Chief Judge

Craig H. Nakamura
Associate Judge

Associate Judge