

NO. 26327

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
TERRY OWENS, Defendant-Appellant.

FILED
STATE OF HAWAII
DEAN A. FLETCHER, CLERK
J. J. RICHMOND

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 02-1-0224)

SUMMARY DISPOSITION ORDER

(By: Burns, Chief Judge, Foley, and Nakamura, JJ.)

Defendant-Appellant Terry Owens (Owens) appeals from the Judgment entered on November 10, 2003, in the Circuit Court of the First Circuit (circuit court).¹ A jury found Owens guilty of second degree robbery, in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(b) (1993).² The court sentenced Owens to five years' probation, subject to a special condition that he serve a one-year term of imprisonment, with credit for time already served. Owens was also ordered to obtain and maintain mental health and substance abuse treatment, as directed by his probation officer.

¹ The Honorable Virginia Lea Crandall presided.

² At the time of the alleged offense, Hawaii Revised Statutes (HRS) § 708-841(1)(b) (1993) provided:

(1) A person commits the offense of robbery in the second degree if, in the course of committing theft:

(b) . . . The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property[.]

Prior to trial, Owens advised the court that he was not asserting an insanity defense and did not plan to call any expert witnesses to testify about his mental illness. Owens, however, stated that he wanted to testify that he had been diagnosed with and treated for a mental illness that caused him to exhibit bizarre and abnormal behavior. The circuit court granted the prosecution's motion *in limine* to preclude Owens from testifying that he suffered from a mental illness, but permitted Owens to testify about his behavior at the time of the alleged robbery.

The complaining witness (CW) testified at trial that while she was shopping at Ala Moana Center, Owens walked past her then turned around and pushed her into a corner. Owens told the CW "[I]f you don't put down your cell phone and give me all your money, I'm going to hurt you." The CW testified that she backed up, walked quickly into a store, and asked the store's saleswomen to call security. Owens followed the CW into the store and repeatedly told the CW "[Y]ou need to give me your money." Two of the store's saleswomen testified that the CW appeared very frightened when she entered the store and that they heard the CW tell Owens to leave her alone.

Owens testified that he sometimes engaged in strange behavior, such as singing and "put[ting] on a scene," that caused people to look at him as if he was weird. With respect to the alleged robbery, Owens testified that he was walking and singing when he accidentally bumped into the CW. He denied the CW's testimony that he had threatened to hurt the CW if she did not

give Owens her money. Instead, Owens testified that he did not have a conversation with the CW, did not threaten her, and did not demand money from her.

On appeal, Owens argues that the circuit court violated his constitutional right to present a defense by precluding him from testifying that he suffered from a mental illness. After a careful review of the record and the briefs submitted by the parties, we affirm.

We need not decide whether the circuit court erred in excluding Owens' proffered testimony regarding his mental illness because assuming, *arguendo*, that the court erred, we conclude that any such error was harmless beyond a reasonable doubt. See Hawai'i Rules of Penal Procedure (HRPP) Rule 52(a) (2007). The circuit court's exclusion of Owens' proffered testimony did not prevent Owens from testifying that he sometimes engaged in strange behavior. He therefore was able to provide a context for his claimed behavior during his encounter with the CW to support the credibility of his version of what happened. In addition, given Owens' version of the incident -- that he did not converse with, demand money from, or threaten the CW -- the excluded testimony regarding his mental illness would not have been probative of whether he acted with the requisite intent to commit the charged offense. Under these circumstances, we conclude that there was no reasonable possibility that any error in excluding Owens' proffered testimony might have contributed to his

conviction. See State v. Pauline, 100 Hawai'i 356, 378, 60 P.3d 306, 328 (2002).

IT IS HEREBY ORDERED that the November 10, 2003, Judgment entered by the Circuit Court of the First Circuit is affirmed.

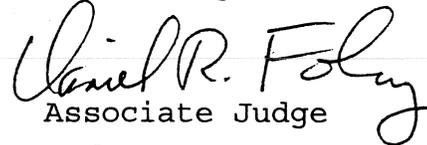
DATED: Honolulu, Hawai'i, March 19, 2007.

On the briefs:

Jon N. Ikenaga
Deputy Public Defender
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Donn Fudo
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee


Chief Judge


Associate Judge


Associate Judge