

NO. 27377

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v  
CHRISTOPHER TOOMBS, Defendant-Appellant

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 03-1-0638)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Defendant-Appellant Christopher Toombs (Toombs) appeals from the Judgment filed on May 17, 2005 in the Circuit Court of the First Circuit (circuit court).<sup>1/</sup> On March 28, 2003, the State of Hawaii (State) charged Toombs via a Complaint with Promoting a Dangerous Drug in the Third Degree (Count I), in violation of Hawaii Revised Statutes (HRS) § 712-1243 (1993 & Supp. 2003), and Unlawful Use of Drug Paraphernalia (Count II), in violation of HRS § 329-43.5(a) (1993).

On February 17, 2005, the jury returned a verdict of guilty on both counts. The circuit court entered its Judgment on May 17, 2005. Toombs timely appealed on June 16, 2005.

On appeal, Toombs argues that (1) the Deputy Prosecuting Attorney (Prosecutor) committed prosecutorial

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<sup>1/</sup> The Honorable Virginia Lea Crandall presided.

misconduct during her opening statement and (2) he was denied effective assistance of counsel.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude:

(1) In examining the record to determine whether there is a reasonable possibility that the Prosecutor's comment might have contributed to the verdict, this court concludes that it did not. The Prosecutor's comment in the instant case was harmless beyond a reasonable doubt. State v. Carvalho, 106 Hawai'i 13, 16 n.7, 100 P.3d 607, 610 n.7 (App. 2004); State v. Sanchez, 82 Hawai'i 517, 528, 923 P.2d 934, 945 (App. 1996); State v. Pacheco, 96 Hawai'i 83, 95, 26 P.3d 572, 584 (2001); State v. Valdivia, 95 Hawai'i 465, 480, 24 P.3d 661, 676 (2001).

(2) Toombs fails to demonstrate how his counsel's failure to (a) object during opening statement to the Prosecutor's comment, (b) introduce evidence to impeach the Honolulu Police Department (HPD) officers' testimony that Toombs appeared to be under the influence of an intoxicant, and (c) object to HPD Detective Koanui's "expert" testimony regarding drug use and drug paraphernalia resulted in either the withdrawal or substantial impairment of a potentially meritorious defense. Hawaii Rules of Evidence (HRE) Rules 702, 401, 402, and 403;

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

State v. Samuel, 74 Haw. 141, 158, 838 P.2d 1374, 1382 (1992);  
Pacheo, 96 Hawai'i at 94, 26 P.3d at 583; State v. Aplaca, 74  
Haw. 54, 70, 837 P.2d 1298, 1307 (1992); Briones v. State, 74  
Haw. 442, 463, 848 P.2d 966, 977 (1993).

Therefore,

IT IS HEREBY ORDERED that the Judgment entered on  
May 17, 2005 in the Circuit Court of the First Circuit is  
affirmed.

DATED: Honolulu, Hawai'i, February 9, 2007.

On the briefs:

Joyce K. Matsumori-Hoshijo  
for Defendant-Appellant.

Brian R. Vincent,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge