

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27634

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
MICHAEL M. SOMA, Defendant-Appellant

KHAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 MAY 21 PM 12:10

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 05-1-0179)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Michael M. Soma (Soma) appeals the Judgment filed on November 1, 2005 in the Circuit Court of the First Circuit<sup>1/</sup> (circuit court).

On January 31, 2005, the State of Hawaii (State) charged Soma via a Complaint with one count of Terroristic Threatening in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(d) (1993). The Complaint alleged that on or about January 22, 2005, Soma did threaten by word or conduct to cause bodily injury to Yojiro Soma (Yojiro) with the use of a dangerous instrument. A jury found Soma guilty of the charged offense. The circuit court entered its Judgment on November 1, 2005. Soma filed a Notice of Appeal on November 30, 2005.

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<sup>1/</sup> The Honorable Karl K. Sakamoto presided.

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On appeal, Soma argues that (1) the circuit court erred by allowing the State to use a meat cleaver (cleaver) as demonstrative evidence in its opening statement prior to the admission of the cleaver into evidence, thereby depriving Soma of his right to a fair trial; (2) there was insufficient evidence to convict him of the offense charged; and (3) the circuit court abused its discretion in sentencing Soma to an extended term of imprisonment.

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) The circuit court did not deprive Soma of his right to a fair trial by allowing the State to use the cleaver as demonstrative evidence in its opening statement prior to the admission of the cleaver into evidence. State v. Simpson, 64 Haw. 363, 369, 641 P.2d 320, 324 (1982); see also State v. Greyson, 70 Haw. 227, 232 n.4, 768 P.2d 759, 762 n.4 (1989); State v. Sanchez, 82 Hawai'i 517, 528, 923 P.2d 934, 945 (App. 1996); Ross v. State, 233 Ga. App. 26, 27, 503 S.E.2d 308 (1998).

(2) There was sufficient evidence to convict Soma of Terroristic Threatening in the First Degree. HRS § 707-716 (1) (d); HRS § 707-715 (1993); State v. Valdivia, 95 Hawai'i 465,

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476, 24 P.3d 661, 672 (2001); State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998); State v. Naeole, 62 Haw. 563, 565, 617 P.2d 820, 823 (1980); State v. Eastman, 81 Hawai'i 131, 141, 913 P.2d 57, 67 (1996).

(3) The circuit court did not abuse its discretion in sentencing Soma to an extended term of imprisonment. HRS § 706-662(1) (Supp. 2005); HRS § 706-661(3) (Supp. 2005); Barnett v. State, 91 Hawai'i 20, 26, 979 P.2d 1046, 1052 (1999); State v. Carvalho, 101 Hawai'i 97, 110-11, 63 P.3d 405, 418-19 (App. 2002); State v. Rivera, 106 Hawai'i 146, 162-63, 102 P.3d 1044, 1060-61 (2004), cert. denied, \_\_ U.S. \_\_, 126 S. Ct. 45 (2005).

Therefore,

The Judgment filed on November 1, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 21, 2007.

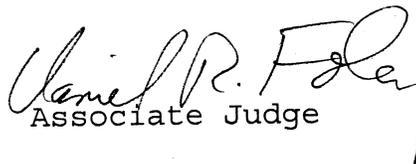
On the briefs:

Shawn A. Luiz  
for Defendant-Appellant.

Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge