

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NOS. 27906 and 27907

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

Cr. No. 05-1-0661

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KEITH DANIELS GOMES, Defendant-Appellant

and

Cr. No. 05-1-1181

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KEITH DANIELS GOMES, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

SUMMARY DISPOSITION ORDER

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

In this consolidated appeal, Defendant-Appellant Keith Daniels Gomes (Gomes) appeals from the March 31, 2006 Amended Judgment of Conviction and Sentence in Cr. No. 05-1-0661 and the March 28, 2006 Judgment of Conviction and Sentence in Cr. No. 05-1-1181, both filed in the Circuit Court of the First Circuit (circuit court).^{1/}

A jury convicted Gomes in Cr. No. 05-1-0661 of two counts of Assault in the Second Degree (Counts I and II), in violation of Hawaii Revised Statutes (HRS) § 707-711(1)(a) and (1)(d) (1993), and in Cr. No. 05-1-1181 of Bribery of a Witness, in violation of HRS § 710-1070 (1993).

The circuit court, pursuant to HRS § 701-109 (1993), merged the Count I Assault in the Second Degree charge with the Count II Assault in the Second Degree charge for purposes of sentencing. The circuit court sentenced Gomes to five years of imprisonment on the Count II Assault in the Second Degree charge

^{1/} The Honorable Steven S. Alm presided.

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

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and five years of imprisonment on the Bribery of a Witness charge, and ordered that the sentences be served concurrently.

On appeal, Gomes contends the circuit court erred in (1) denying his three oral motions for judgment of acquittal of the bribery charge, and (2) entering convictions on both counts of Assault in the Second Degree after the circuit court had stated at sentencing that one of the two assault counts would be dismissed because "they are dual charging."

After a careful review of the record and briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised, we hold:

(1) The circuit court did not err in denying Gomes's motions for judgment of acquittal on the bribery charge. State v. Keawe, 107 Hawai'i 1, 4, 108 P.3d 304, 307 (2005). Viewing the evidence in the light most favorable to the State, there was sufficient evidence that Gomes offered Zook money with the intent to induce her to avoid legal process summoning her to testify.

(2) Although the circuit court stated at sentencing that it would dismiss one of the two counts of Assault in the Second Degree, the circuit court, in the Amended Judgment of Conviction and Sentence, instead merged the two counts "for purposes of sentencing." The State agrees with Gomes that the Amended Judgment of Conviction and Sentence should be corrected to reflect (a) the dismissal of one count of Assault in the Second Degree and (b) the conviction and sentence on the remaining count.

Therefore,

(1) The Judgment of Conviction and Sentence in Cr. No. 05-1-1181, filed on March 28, 2006 in the Circuit Court of the First Circuit, is affirmed; and

(2) the Amended Judgment of Conviction and Sentence in Cr. No. 05-1-0661, filed on March 31, 2006 in the Circuit Court

of the First Circuit, is vacated, and Cr. No. 05-1-0661 is remanded to the circuit court to enter a new judgment consistent with this order.

DATED: Honolulu, Hawai'i, July 11, 2007.

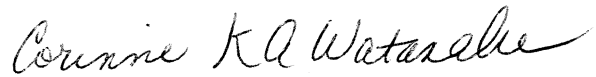
On the briefs:

Phyllis J. Hironaka,
Deputy Public Defender,
for Defendant-Appellant.

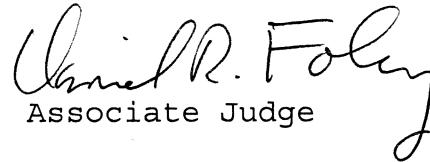


Chief Judge

Donn Fudo,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Associate Judge



Associate Judge