

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 28340

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,  
v.  
DOUGLAS MURPHY, Defendant-Appellant

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STATE OF HAWAII

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CRIMINAL NO. 06-1-0660)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Douglas Murphy (Murphy) appeals from the December 5, 2006 Judgment of Conviction and Sentence filed in the Circuit Court of the First Circuit (circuit court).

Murphy was indicted by a grand jury for "threaten[ing], by word or conduct[,] to cause bodily injury to another person and/or persons, with the use of a dangerous instrument, in reckless disregard of the risk of terrorizing another person and/or persons thereby committing the offense of Terroristic Threatening in the First Degree," in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(d) (1993). The charge stemmed from a February 5, 2006 incident in which Murphy allegedly threatened the manager, several employees, and customers of a restaurant with what appeared to be a firearm, but which turned out to be an air gun.

Prior to trial, Murphy filed a Motion to Suppress Evidence, "to wit: a blue suitcase and its contents." The circuit court denied the motion in the Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion to Suppress Evidence filed on August 7, 2006.<sup>1</sup> A jury subsequently

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The Honorable Marcia J. Waldorf presided.

found Murphy guilty of the included offense of Terroristic Threatening in the Second Degree, and the circuit court sentenced him to one year of imprisonment with credit for time served.<sup>2</sup>

Murphy raises the following points of error on appeal:

(1) "The court erred in denying [Murphy's] Motion to Suppress the blue suit case [sic] and [its] contents, which were the fruit of the warrantless arrest of . . . Murphy."

(2) "The court erred in ruling that the March 2, 2006, warrantless arrest of . . . Murphy was lawful, absent exigent circumstances at the time of Murphy's arrest."

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 resolve Murphy's points of error as follows:

(1) The circuit court did not err in denying the motion to suppress evidence, i.e., the blue suitcase and its contents. The circuit court correctly found that Warren Taylor (Taylor) had authority to allow the police to enter the Paoakalani Street apartment where the suitcase was recovered, and that he did in fact consent to their entry. State v. Mahone, 67 Haw. 644, 701 P.2d 171 (1985); State v. Vinuya, 96 Hawai'i 472, 485, 32 P.3d 116, 129 (App. 2001) ("[i]n order to establish that a third party had actual authority to consent to a search of a defendant's premises or effects, the State must show that the third person had access to the area searched, and either common authority over it, a substantial interest in it, or permission to exercise that access.") (quotation marks, citation, and brackets omitted). Even assuming arguendo that the arrest of Murphy inside the apartment without a warrant was unlawful, the recovery of the suitcase was not tainted by any illegality in the arrest since police had Taylor's consent to conduct the search that led to the recovery

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<sup>2</sup> The Honorable Karl K. Sakamoto presided.

of the suitcase. See State v. Poaipuni, 98 Hawai'i 387, 392-93, 49 P.3d 353, 358-59 (2002) ("The 'fruit of the poisonous tree' doctrine prohibits the use of evidence at trial which comes to light as a result of the exploitation of a previous illegal act of the police. . . . In other words, the ultimate question that the fruit of the poisonous tree doctrine poses is as follows: Disregarding the prior illegality, would the police nevertheless have discovered the evidence?") (citation, brackets, and quotation marks omitted).

(2) We conclude that the warrantless arrest of Murphy inside the apartment was, in any event, lawful. HRS § 803-1(a) provides that "[n]o arrest of any person shall be made without first obtaining a warrant . . . except in the cases provided in this chapter or otherwise provided by law." HRS § 803-1(a) (Supp. 2007). As an exception to this rule, a police officer may arrest a suspect without a warrant where "the officer has probable cause to believe that such person has committed any offense, whether in the officer's presence or otherwise." HRS § 803-5 (1993). However, in this case, the probable cause exception is limited in two relevant ways. First, an arrest in a place where a defendant has a reasonable expectation of privacy requires a warrant absent exigent circumstances. State v. Figaroa, 3 Haw. App. 377, 383, 650 P.2d 1373, 1378-79 (1982). Second, a warrant is required where the police "have probable cause to arrest, have no obstacle preventing them from making the arrest, and wait a significant amount of time before making the arrest." State v. Keawe, 107 Hawai'i 1, 6-7, 108 P.3d 304, 309-10 (2005). Neither of these two limitations apply in this case.

Although Murphy had been authorized by Taylor to use the apartment until Monday, February 27, 2006, Murphy did not have a reasonable expectation of privacy in the apartment after that date. A defendant seeking exclusion of evidence gained

pursuant to a warrantless search has the burden of demonstrating that he "exhibited an actual expectation of privacy" in the location searched, and "the expectation must be one that society is prepared to acknowledge as reasonable." State v. Scanlan, 65 Haw. 159, 160, 649 P.2d 737, 738 (1982) (citations omitted). Any expectation of privacy that Murphy had in the apartment on March 2, 2006 was not reasonable because he had remained in the apartment past his authorization to do so, he did not seek permission from Taylor to continue to stay there, and he failed to show that Taylor had a prior pattern or practice of allowing weekend guests to extend their stay without permission. See State v. Mitchell, 20 S.W.3d 546, 559 (Mo. Ct. App. 2000) ("In the absence of evidence of motel permission to stay or of a prior pattern or practice of the motel of allowing guests to stay past check-out time, Defendant's reasonable expectation of privacy in the room ended at check-out time even if he and his possessions still remained in the room. The motel staff would have had a right to enter at any time to evict him or to prepare the room for the next guest.") (citation omitted); State v. McKinney, 637 So.2d 1120, 1126 (La. Ct. App. 1994) (defendant staying at house without homeowner's permission did not have a reasonable expectation of privacy in the bedroom); cf. State v. Davis, 937 P.2d 1110, 1113 (Wash. Ct. App. 1997) (defendant had a reasonable expectation of privacy in his motel room at the time police entered, although warrantless entry occurred less than an hour after check-out time and defendant had not yet paid for another night, where motel had previously accepted rental payments from defendant at least 3 hours late and had tolerated his overstays).

Moreover, the warrantless arrest of Murphy did not violate the principles set forth by the Hawai'i Supreme Court in Keawe. In Keawe, a police officer observed the crime of prostitution being committed by the defendant, but police waited

20 days before making a warrantless arrest of defendant as part of a raid on the establishment where she worked. 107 Hawai'i at 3, 108 P.3d at 306. The supreme court held that the warrantless arrest was unlawful since "police [had] probable cause to arrest, [had] no obstacle preventing them from making the arrest, and wait[ed] a significant amount of time before making the arrest." Id. at 6, 108 P.3d at 309. However, the supreme court held that "[o]ther types of delays may be proper: for example, if the delay between the development of probable cause and the arrest occurs because the police are attempting to identify, locate, or apprehend a defendant, the arrest will satisfy HRS § 803-5." Id. at 7, 108 P.3d at 310.

The circuit court here concluded that "[Murphy] had left the scene prior to police arriving, the delay was to investigate the offense, and the delay provided no tactical benefit to the state." Because Murphy did not specifically challenge the accuracy of those underlying factual findings on appeal, this court is bound by them. See State v. Claunch, 111 Hawai'i 59, 60 n.2, 137 P.3d 373, 374 n.2 (App. 2006); Hawai'i Rules of Appellate Procedure Rule 28(b). We conclude that the circuit court did not err in holding that the arrest of Murphy without a warrant was lawful.

Therefore, the December 5, 2006 Judgment of Conviction and Sentence filed in the Circuit Court of the First Circuit is hereby affirmed.

DATED: Honolulu, Hawai'i, July 25, 2008.

On the briefs:

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for Defendant-Appellant.

Brian R. Vincent,  
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for Plaintiff-Appellee.

*Man Hechmanwald*

Chief Judge

*Daniel R. Foley*  
Associate Judge

*Ann H. Nakamura*  
Associate Judge