

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28452

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
MARK ALAN TAYLOR, Defendant-Appellant

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

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(Cr. No. 06-1-156K)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Mark Alan Taylor (Taylor) appeals from the February 21, 2007 judgment of conviction entered against him by the Circuit Court of the Third Circuit (circuit court).<sup>1</sup> The judgment was entered based on a jury verdict rendered on November 29, 2006.

Taylor raises three points of error on appeal. First, he was denied due process of law and a fair trial when he was convicted of carrying or using a firearm in the commission of a separate felony, in violation of Hawaii Revised Statutes (HRS) § 134-21 (Supp. 2007), ownership or possession prohibited, in violation of HRS § 134-7(b) and (h) (Supp. 2007), and place to keep pistol or revolver in a prohibited place, in violation of HRS § 134-25 (Supp. 2007), based on the prosecution's misconduct in tying him to a backpack recovered by the police and to a gun found within it, neither of which were owned by Taylor. Second, by referring to him as the "ring leader," the prosecution misstated the evidence and improperly injected personal opinion into its closing argument. Finally, the circuit court erred by admitting five photographs, State's exhibits 27-2 through 27-6, depicting the injuries suffered by the complaining witness (CW), because, Taylor contends, they were prejudicially cumulative.

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<sup>1</sup> The Honorable Elizabeth A. Strance presided.

Upon careful review of the issues raised and arguments made by the parties, the applicable authority, and the record in this case, we resolve Taylor's points as follows:

1. Taylor fails to present a discernible argument with respect to his first claim of error. Taylor fails to explain what relevance ownership of either the backpack or the gun had to the prosecuted charges. Taylor also fails to cite any apposite authority or make a coherent, precedent-based argument regarding his allegation of "bad faith" in this context that supports the grant of relief. As such, we decline to review this issue. Hawai'i Rules of Appellate Procedure, Rule 28(b)(7).

Moreover, this alleged error was not properly preserved before the circuit court and is therefore subject only to plain error review. State v. Hauge, 103 Hawai'i 38, 48, 79 P.3d 131, 141 (2003). To the extent his arguments may be ascertained, there is nothing in the record to support Taylor's contention that there was prosecutorial misconduct. With respect to the ownership of the backpack and gun, the record does not support Taylor's view that the prosecution was attempting to prove that the backpack and the gun were his. In any event, there is nothing in the record to support Taylor's allegation that the prosecution did not have a good-faith basis for believing the testimony presented by its witnesses was true. U.S. v. Rewald, 889 F.2d 836, 860 (9th Cir. 1989).

2. The prosecution's use of the expression "ring leader" is supported by evidence in the record. The prosecution presented evidence that Taylor formulated the plan to find CW for a reward and promised to "take care" of Kapena Kuahiwinui (Kuahiwinui) if Kuahiwinui helped, that it was Taylor who took CW at knife point to Kuahiwinui's car, and that it was Taylor who had repeatedly cut, stabbed and threatened CW while in the car. Although there is no established legal definition for the term "ring leader," the record contains ample evidence supporting the common understanding of the term as that of "a leader of a ring of individuals engaged esp. in improper or unlawful activities."

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Merriam-Webster's Collegiate Dictionary 1074 (11th ed. 2003). As such, the prosecution's statements were supported by the evidence and were proper. State v. Rogan, 91 Hawai'i 405, 412-13, 984 P.2d 1231, 1238-39 (1999).

3. The circuit court did not abuse its discretion when it admitted certain photographs, State's exhibits 27-2 through 27-6, into evidence. We note that Taylor objected only to Exhibits 27-1 and 27-2 on the ground that they were the same. After the prosecution withdrew Exhibit 27-1, Taylor did not lodge objections to the remaining photographs in the series. Absent plain error, no error may be predicated upon the admission of evidence without a proper objection. Hawaii Rules of Evidence, Rule 103. We see no plain error here. Taylor was charged with both kidnapping and assault in the second degree. The photographs depicted the numerous cut and stab wounds sustained by CW and were relevant to the prosecution's burden of proving CW was not voluntarily released *unharm*ed, HRS § 707-720(3) (1993), and that Taylor inflicted bodily injury upon the CW, HRS § 707-711(1)(d) (Supp. 2006). See State v. Edwards, 81 Hawai'i 293, 298-99, 916 P.2d 703, 708-09 (1996). Review of each of the subject photographs reveals that they were not "substantially the same as other evidence that has already been received," State v. Marcos, 106 Hawai'i 116, 123, 102 P.3d 360, 367 (2004) and were, consequently, not cumulative.

Therefore,

The Circuit Court of the Third Circuit's February 21, 2007 judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, September 24, 2008.

On the briefs:

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for Plaintiff-Appellee.

*Corenne K.A. Watanabe*  
Presiding Judge

*Craig W. Nakamura*  
Associate Judge

*Acuna Don Gijne*  
Associate Judge