

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28717

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MICHAEL D. MACKIEWICZ, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(Cr. No. 06-1-0438(3))

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Michael D. Mackiewicz (Mackiewicz) appeals from the August 7, 2007 Judgment and Sentence of the Circuit Court of the Second Circuit (circuit court)¹ for Robbery in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 708-841 (Supp. 2006). After a careful review of the issues raised, the arguments made, the applicable authority and the record in this case, we affirm.

(1) Taking the evidence in the light most favorable to the prosecution, State v. Grace, 107 Hawai'i 133, 139, 111 P.3d 28, 34 (App. 2005), there was substantial evidence supporting the conviction. The uncontroverted evidence that Mankiewicz participated in discussions planning the robbery, followed the principal to the scene of the robbery, witnessed the crime, and shortly thereafter met and drove the principal away from the area while dividing the proceeds, was sufficient evidence to support his conviction.

(2) The circuit court did not abuse its discretion, State v. Torres, 85 Hawai'i 417, 421, 945 P.2d 849, 853 (App. 1997), in ruling that drug evidence relating "to the planning, commission, and/or events that followed relative to the fruits of the [robbery] . . . [were] admissible" under Hawaii Rules of Evidence (HRE) Rule 404(b). We reject Mackiewicz's claim that

¹ The Honorable Joseph E. Cardoza presided.

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although the drug evidence probative, its probative value was substantially outweighed by its prejudicial effect. The evidence was highly probative of Mackiewicz's motive for participating in the crime. Mackiewicz has not shown that he was unfairly prejudiced, especially in light of the limiting instruction given to the jury properly confining their consideration of this evidence. HRE Rule 404(b).

(3) As Mackiewicz has conceded in his reply brief that the record is insufficient to support the claim of ineffective assistance of counsel made in his opening brief, we decline to consider this issue.

Therefore, the Circuit Court of the Second Circuit's August 7, 2007 Judgment and Sentence is affirmed.

DATED: Honolulu, Hawai'i, August 19, 2008.

On the briefs:

Zachary Summerfield,
for Defendant-Appellant.


Presiding Judge

Richard K. Minatoya,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Associate Judge


Associate Judge