
NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29158

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIISTATE OF HAWAII, Plaintiff-Appellee, v.
SCOTT MAXWELL, Defendant-AppellantK. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Cr. No. 06-1-2394)SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Nakamura, and Leonard, JJ.)

Defendant-Appellant Scott Maxwell (Maxwell) appeals from the final judgment entered by the Circuit Court of the First Circuit (circuit court)¹ on May 5, 2008, convicting Maxwell of methamphetamine trafficking in the second degree in violation of Hawaii Revised Statutes (HRS) § 712-1240.8 (Supp. 2008).

Maxwell contends that the circuit court: (1) erred in denying his motion for judgment of acquittal because there was insufficient evidence to convict him of the charged offense; and (2) abused its discretion by failing to grant his motion for continuance of trial.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the case law and statutes relevant to the arguments advanced and the issues raised by the parties, we disagree with Maxwell and conclude as follows.

1.

HRS § 712-1240.8 states, in relevant part:

Methamphetamine trafficking in the second degree.

(1) A person commits the offense of methamphetamine trafficking in the second degree if the person knowingly distributes methamphetamine in any amount.

The witnesses at trial--Officer Keane Tabanera (Officer Tabanera), Officer Celestino Herana, and Maxwell--all testified that Maxwell did, in fact, sell methamphetamine to Officer

¹ The Honorable Steven S. Alm presided.

Tabanera. Thus, there clearly was sufficient evidence to allow a reasonable mind to conclude that Maxwell did knowingly distribute methamphetamine to Officer Tabanera.

Maxwell argues that he was nevertheless entitled to a judgment of acquittal because he established as a matter of law that he was entrapped by Officer Tabanera into committing the proscribed conduct. The Hawai'i Supreme Court has held "that entrapment is a jury question, unless the evidence is undisputed and so clear that it presents a legal question as a matter of law." State v. Kelsey, 58 Haw. 234, 236, 566 P.2d 1370, 1371-72 (1977) (agreeing with the United States Supreme Court's view of entrapment as established in Sherman v. United States, 356 U.S. 369 (1958)). In the instant case, there was conflicting testimony at trial regarding Officer Tabanera's conduct with respect to Maxwell. Therefore, as in Kelsey, "[t]his is a clear case where the question of entrapment must be determined by a jury, who, in arriving at its verdict, must determine the credibility of the witnesses and the weight of the evidence." Id. at 237, 566 P.2d at 1372.

Accordingly, the circuit court properly denied Maxwell's motion for judgment of acquittal.

2.

The circuit court did not abuse its discretion when it denied Maxwell's motion for continuance on the day trial was to begin. See State v. Soto, 60 Haw. 493, 591 P.2d 119 (1979); State v. Lee, 9 Haw. App. 600, 856 P.2d 1279 (1993).

The record indicates that Maxwell was indicted on November 29, 2006 and his trial commenced on February 12, 2008. His trial counsel thus had ample time to prepare for trial. Maxwell did not move to continue trial until the morning of trial, when fifty prospective jurors had already been summoned for duty and were waiting for trial to begin. Although Maxwell claimed that he was entitled to a continuance because he had just become aware of a discrepancy in the number of recorded phone calls between him and Officer Tabanera, the circuit court appropriately concluded that Maxwell could adequately address the discrepancies by means of thorough cross-examination. Maxwell

has not demonstrated that his case was substantially impaired by the denial of the motion of continuance such that he could not adequately defend himself.

The final judgment entered by the circuit court on May 5, 2008 is affirmed.

DATED: Honolulu, Hawai'i, April 21, 2009.

On the briefs:

Shawn A. Luiz
for Defendant-Appellant.

Cornie K A Watanabe

Loren J. Thomas,
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for Plaintiff-Appellee.

Cy'el. Nakamura
