

NO. 25068

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

KEITH MURAUSKAS, Defendant-Appellant

and

EDWARD WALLACE MARTIN, Defendant

EMILIANO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-0704)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Acoba, and Duffy, JJ.)

Plaintiff-Appellee State of Hawai'i (the prosecution) filed a complaint charging Defendant-Appellant Keith Murauskas (Defendant) in Count I with murder in the second degree of Paul Salazar (Paul), Hawai'i Revised Statutes (HRS) § 707-701.5 (1993),¹ in Count II with attempted murder in the first degree of Paul and his wife, Virginia Salazar (Virginia), HRS §§ 705-500,²

¹ Hawai'i Revised Statute (HRS) § 707-701.5(1) states that "[e]xcept as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person."

² HRS § 705-500 states as follows:

(1) A person is guilty of an attempt to commit a crime if the person:

- (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or
- (b) Intentionally engages in conduct which, under

(continued...)

707-701(1)(a),³ and 706-656 (1993 & Supp. 2004),⁴ in Count III with attempted murder in the second degree of Virginia, HRS § 705-500, 707-701.5, and 706-656, and in Count IV with kidnapping, HRS § 707-720(1)(b) (1993).⁵ In a jury trial before the circuit court of the first circuit⁶ (the court) Defendant was found guilty as charged as to Count II and Count IV of the complaint.

On appeal Defendant (1) "challenges . . . the sufficiency of the evidence presented at trial to support his conviction in Count II" and (2) contends "the jury convicted [Defendant] . . . based on their [sic] bias against [Defendant]."

²(...continued)

the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(Emphases added.)

³ HRS § 707-701(1)(a) states that "[a] person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of . . . [m]ore than one person in the same or separate incident[.]"

⁴ HRS § 706-656 (Supp. 2004) states in pertinent part as follows:

(2) Except as provided in section 706-657, pertaining to enhanced sentence for second degree murder, persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole. . . .

⁵ HRS § 707-720(1)(b) states that "[a] person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to . . . [u]se that person as a shield or hostage[.]"

⁶ The Honorable Dexter D. Del Rosario presided.

Defendant requests that his conviction of the attempted murder of Virginia be reversed and an acquittal with respect to Virginia be filed, and does not oppose entry of a guilty verdict for murder in the second degree as to Paul. The conviction in Count IV for kidnapping is not challenged on appeal.

As to the first ground, when the sufficiency of the evidence is challenged on appeal the standard of review is that

evidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact.

State v. Young, 93 Hawai'i 224, 230, 999 P.2d 230, 236 (2000) (citations omitted). Substantial evidence is defined as "credible evidence which is of sufficient quality and probative value to enable a [person] of reasonable caution to support a conclusion." State v. Batson, 73 Hawai'i 236, 248-49, 831 P.2d 924, 931 (1992).

The testimony of codefendant Edward Wallace Martin (Martin) was that he and Defendant decided to rob Paul. Martin maintained that because Defendant "didn't want anybody ratting on him," they agreed to commit a "double murder" "from the beginning." According to Martin, they planned to "go up to Paul's apartment," "do Paul first," then kill Virginia. Martin testified that after Paul had been hit with a hammer and stabbed with a knife, "the plan . . . to kill [Virginia] when she [got] home" was "still in effect." Martin indicated that "[t]he plan

was for [Defendant] to grab [Virginia] when she came to the door, take her to the bathroom, and kill her in the tub[.]” Martin further testified that “after Paul was dead already, . . . [Defendant] made preparations to wait for Virginia to come to the door. . . . He cleared himself a little space behind the front door and he just was going to crouch there and wait for her to open the door up.” Defendant had a hunting knife with him and the hammer.

In sum, Defendant asserts that no substantial steps were taken with respect to the attempted murder charge against Virginia because

the acts committed by these two perpetrators after the murder of [Paul] consisted of turning out the lights in the apartment, crouching down the window, and periodically peering out of the window in search for [Virginia], and placing the sledgehammer, knife, and duct tape on the arm of the sofa. Beyond that, however, absolutely nothing occurred.

(Emphasis added.)

HRS § 705-500(1)(b) applies if “the defendant’s conduct has advanced so far toward the criminal objective as to constitute a substantial step in a course of conduct intended to reach that objective.” Commentary on HRS § 705-500. In the instant case, the court’s attempt instruction and its first degree attempted murder instruction rested on the language of HRS § 705-500(1)(b). According to the Commentary, with regard to subsections (1) and (2) of HRS § 705-500, “[s]ubsection (3) provides that conduct shall not be considered a ‘substantial step’ under subsections (1) and (2) unless it is strongly

corroborative of the defendant's criminal intent." Id. In that connection,

[t]here are, on the other hand, certain types of conduct which, if strongly corroborative of the defendant's criminal intent, could reasonably be held to constitute a "substantial step" and should not be held insufficient on this issue as matter of law. These types of conduct are: (a) lying in wait, searching for, or following the contemplated victim of the crime; . . . (e) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances[.]

Id. (emphases added). These examples encompass the evidence to which both the defense and the prosecution refer. As to "lying in wait," the testimony of Martin related he and Defendant had planned to kill both Paul and Virginia and waited in the living room for Virginia after Paul had been killed, on the assumption Virginia would be coming home. As to the "possession of materials to be employed" in the planned murder of Virginia, the codefendants waited for her in the living room in her apartment and Defendant had with him a knife and a hammer at the ready. Such conduct was "strongly corroborative" of criminal intent and under HRS § 705-500 such conduct can be held "reasonably" to constitute a "substantial step" in attempting to commit Virginia's murder.

As to the second ground, Defendant refers to "the horrific nature of the crime, . . . [Defendant's] in-court testimony where it is apparent he lied, . . . [Defendant] causing . . . counsel to approach the bench regarding various questions he desired to be asked of various witnesses and his acting out

behavior." However, he cites no law and makes no discernible argument with respect to this contention. "This court may 'disregard [a] particular contention' if the appellant 'makes no discernible argument in support of that position[.]'" Taomae v. Lingle, 108 Hawai'i 245, 257, 118 P.3d 1188, 1200 (2005) (quoting Norton v. Admin. Dir. of the Court, 80 Hawai'i 197, 200, 908 P.2d 545, 548 (1995)). Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

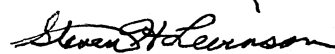
IT IS HEREBY ORDERED that the court's judgment filed on April 12, 2002, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, November 21, 2005.

On the briefs:

Christopher R. Evans
for defendant-appellant.

Donn Fudo, Deputy Prosecuting
Attorney, City & County
of Honolulu, for
plaintiff-appellee.



Kama E. Duggan, Jr.