

*** NOT FOR PUBLICATION ***

NO. 26253

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

CHARMAINE K. KEKUEWA, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-0575)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Charmaine K. Kekuewa appeals from the judgment of the circuit court of the first circuit, the Honorable Karen S.S. Ahn presiding, entered on October 31, 2003, convicting her of and sentencing her for the offense of terroristic threatening in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 707-716(1)(d) (1993). On appeal, Kekuewa argues: (1) that the circuit court plainly erred in failing to clearly instruct the jury regarding self-defense; (2) that the circuit court plainly erred in failing to (a) correctly define "true threat," (b) distinguish a "true threat" from a "threat," (c) properly instruct the jury that "imminency" is a requisite condition to finding a "true threat," and (d) properly instruct the jury that the State of Hawai'i [hereinafter, "the prosecution"] must prove beyond a reasonable doubt the existence of a "true threat"; and (3) that the circuit court erred in denying her motion for judgment of acquittal, inasmuch as there was insufficient evidence to establish that she

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committed the offense of terroristic threatening in the first degree.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we resolve Kekuewa's appeal as follows.

(1) The circuit court did not plainly err in instructing the jury regarding self-defense. "Ordinarily, instructions to which no objection was made at trial may not be raised as error on appeal." State v. Pintero, 75 Haw. 282, 290, 859 P.2d 1369, 1374 (1993); see Hawai'i Rules of Penal Procedure Rule 30(f) (2004). Kekuewa fails to cite any relevant case law in support of her contentions, nor does she explain how the circuit court's alleged errors contributed to her conviction. Inasmuch as Kekuewa "presents no discernable argument in support of th[ese] contention[s][,] . . . it is our prerogative to disregard this claim." State v. Bui, 104 Hawai'i 462, 464, 92 P.3d 471, 474 (2004) (quoting State v. Moore, 82 Hawai'i 202, 206, 921 P.2d 122, 126 (1996)) (some brackets added and some in original).

The circuit court correctly instructed the jury as to the use of "force" in addition to the use of "deadly force" in the self-defense instruction. Cf. State v. Van Dyke, 101 Hawai'i 377, 69 P.3d 88 (2003).

The circuit court's self-defense instruction was derived almost entirely from the Hawai'i Pattern Jury Instruction -- Criminal Instruction No. 7.01 on self-defense, which this

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court has deemed "fully consonant with the controlling statutory and case law of this state." State v. Augustin, 101 Hawai'i 127, 63 P.3d 1097 (2002).

"[W]hen read and considered as a whole," the circuit court's self-defense instruction was not "prejudicially insufficient, erroneous, inconsistent, or misleading." State v. Aganon, 97 Hawai'i 299, 302, 36 P.3d 1269, 1272 (2001); Pinero, 75 Haw. at 296-97, 859 P.2d at 1376.

(2) The circuit court did not plainly err in defining or properly instructing the jury regarding what constitutes a "true threat." The "true threat" requirement is not limited to verbal conduct, and the circuit court's instruction complies with our jurisprudence. See State v. Martins, 106 Hawai'i 136, 102 P.3d 1034 (2004); State v. Valdivia, 95 Hawai'i 465, 24 P.3d 661 (2001); State v. Chung, 75 Haw. 398, 415-16, 862 P.2d 1063, 1072 (1993); United States v. Kelner, 534 F.2d 1020 (2d Cir.), cert. denied, 429 U.S. 1022 (1976). The jury instruction regarding a "true threat" was not "prejudicially insufficient, erroneous, inconsistent, or misleading." Aganon, 97 Hawai'i at 302, 36 P.3d at 1272; Pinero, 75 Haw. at 296-97, 859 P.2d at 1376.

(3) The circuit court did not err in denying Kekuewa's motion for judgment of acquittal. Upon viewing the evidence in the light most favorable to the prosecution, and "in full recognition of the province of the trier of fact, the evidence [wa]s sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt." State v. Aplaca, 96 Hawai'i 17, 21, 25 P.3d 792, 796

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(2001). Therefore,

IT IS HEREBY ORDERED that the judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, March 15, 2005.

On the briefs:

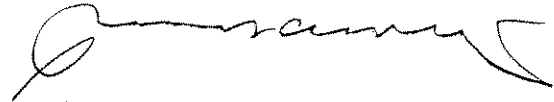
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