

*** NOT FOR PUBLICATION ***

NO. 26476

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

JOHN MCGOVERN, Defendant-Appellant.

NORMA T. YARA
CLERK APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 02-1-195)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant John McGovern appeals from the March 1, 2004 judgment of conviction and sentence of the Circuit Court of the Third Circuit, the Honorable Judge Terence T. Yoshioka presiding, resulting from a jury verdict finding McGovern guilty of murder in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 707-701(1)(a) (1993), carrying or use of a firearm in commission of a separate felony, in violation of HRS § 134-6(a) (Supp. 1999), and unauthorized control of propelled vehicle, in violation of HRS § 708-836 (Supp. 2001). On appeal, McGovern alleges the circuit court: (1) erred by refusing to give requested jury instructions regarding criminal conspiracy, criminal solicitation, and evaluating accomplice testimony; and (2) improperly denied McGovern's motion to dismiss Count IV, carrying or use of a

firearm in commission of a separate felony, [hereinafter, the firearm charge].

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 by the parties, we resolve McGovern's contentions as follows:

(1) The circuit court did not err in refusing to instruct the jury on criminal conspiracy and solicitation to commit murder in the first degree because McGovern was convicted of the charged offense of murder in the first degree, thereby rendering the circuit court's failure to instruct on criminal conspiracy and solicitation harmless. See State v. Haanio, 94 Hawai'i 405, 415, 16 P.3d 246, 256 (2001). Further, the circuit court did not err in refusing to give standard jury instruction 6.01A regarding accomplice testimony because the jury, having been given standard jury instruction 3.09, was sufficiently alerted to the factors it needed to consider in determining the credibility and motivation of the testimony of McGovern's accomplice via opening statements, evidence presented to the jury, cross-examination, and closing arguments. See State v. Okumura 78 Hawai'i 383, 408, 894 P.2d 80, 105 (1995).

(2) The circuit court properly denied McGovern's motion to dismiss the firearm charge because the indictment, when read together with the other charges of murder in the first and second degree, adequately informed McGovern of the nature of the

cause of action against him. See HRS § 806-31 (1993); Hawai'i Rules of Penal Procedure Rule 7(d) (2001); see also State v. Israel, 78 Hawai'i 66, 70-75, 890 P.2d 303, 307-312 (1995); State v. Sprattling, 99 Hawai'i 312, 318-19, 55 P.3d 276, 282-83 (2002). Therefore,

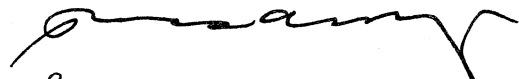
IT IS HEREBY ORDERED that the circuit court's March 1, 2004 judgment of conviction and sentence is affirmed.

DATED: Honolulu, Hawai'i, July 11, 2005.

On the briefs:

Keith S. Shigetomi,
for defendant-appellant

Jack N. Matsukawa,
Deputy Prosecuting Attorney,
for plaintiff-appellee



Kara E. Duggan