

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 26874

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

SHAUN C. RODRIGUES, Defendant-Appellant.

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 00-1-1515)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Shaun C. Rodrigues appeals from the judgment, filed on September 10, 2004, by the First Circuit Court, the Honorable Virginia L. Crandall presiding, denying his Motion for Stay of Judgment to Either Allow the Gathering of Additional Evidence and a Reopening of the Trial in this Matter or for a New Trial [hereinafter, Motion to Reopen], and challenges the December 23, 2003 Findings of Fact (FOF), Conclusions of Law (COL), and Decision, adjudicating him guilty on the following five counts: Count I, Burglary in the First Degree, in violation of Hawai'i Revised Statutes (HRS) § 708-810(1)(c)(1993);<sup>1</sup> Counts II and III, Robbery in the First

<sup>1</sup> HRS § 708-810(1) states, in pertinent part, that:

(1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

(c) The person recklessly disregards a risk that the

(continued...)

Degree, in violation of HRS § 708-840(1)(b)(ii) (1993 & Supp. 2004);<sup>2</sup> and Counts IV and V, Kidnapping, in violation of HRS § 707-720(1)(e) (1993).<sup>3</sup> On appeal, Rodrigues contends that: (1) the trial court's December 23, 2002 Findings of Fact (FOFs), Conclusions of Law (COLs), and Decision were not supported by substantial evidence because (a) they were based on unreliable eyewitness identifications and (b) the evidence as a whole was insufficient to convict him; and (2) the trial court abused its discretion in denying his Motion to Reopen where he had newly discovered evidence that could have exonerated him and implicated another. **OB at 17, 33.**

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the arguments advanced and the issues raised by the parties, we hold: (1) there was sufficient evidence to support Rodrigues'

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<sup>1</sup>(...continued)

building is the dwelling of another, and the building is such a dwelling.

<sup>2</sup> HRS § 708-840(1) states, in relevant part, that:

(1) A person commits the offense of robbery in the first degree if, in the course of committing theft:

(b) . . . . The person is armed with a dangerous instrument and:

(ii) . . . . The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.

<sup>3</sup> HRS § 707-720(1)(e) states, in relevant part, that:

(1) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

(e) Terrorize that person or a third person[.]

conviction where (a) the eyewitness identifications were sufficiently reliable under the five factors enunciated by the United States Supreme Court in Neil v. Biggers, 409 U.S. 188 (1972), and adopted by this court in State v. Padilla, 57 Haw. 150, 552 P.2d 357 (1976), and (b) the evidence as a whole was sufficient to support the conviction when viewed in the light most favorable to the prosecution, see State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (citations omitted), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992); and (2) the Motion to Reopen was properly denied where the evidence submitted did not meet the standard of being "relevant, admissible, technically adequate, and helpful to the [trier of fact] in ascertaining [the defendant's] guilt or innocence." State v. Christian, 88 Hawai'i 407, 426, 967 P.2d 239, 258 (1998) (quoting United States v. Walker, 772 F.2d 1172, 1177 (5th Cir. 1985)). Accordingly,

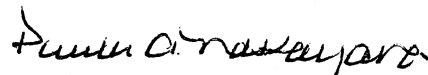
IT IS HEREBY ORDERED that the trial court's September 10, 2004 judgment of convictions and sentence are affirmed.

DATED: Honolulu, Hawai'i, December 7, 2005.

On the briefs:

William A. Harrison;  
Michael K. Tanigawa (of Char  
Sakamoto Ishii Lum & Ching),  
for defendant-appellant

James M. Anderson,  
Deputy Prosecuting Attorney,  
for plaintiff-appellee



James E. Duffin