

DISSENTING OPINION BY NAKAMURA, C.J.

In my view, the Circuit Court erred in ruling pre-trial that Defendant-Appellant Chadwick Tadly (Tadly) was precluded from introducing evidence of the decedent's prior history of violence -- namely, a stabbing incident in Waipahu, an assault with a golf club near a Diamond Head beach, and a conviction for second-degree assault. Tadly sought to introduce the decedent's prior acts of violence, and Tadly's knowledge of those acts, to show Tadly's state of mind in arming himself with a gun in response to the decedent's volatile and violent behavior. The decedent, while intoxicated, had repeatedly kicked and punched a guest in Tadly's apartment; ignored Tadly's request that the decedent stop hitting the guest or leave; punched Tadly's refrigerator; and broken Tadly's Christmas tree in half and thrown it on the floor. In response, Tadly grabbed a gun.

I.

A.

Tadly's theory of defense was that he acted reasonably, and not recklessly, in grabbing the gun, and that during his subsequent struggle with the decedent, the gun went off accidentally, killing the decedent. The precluded evidence was directly relevant to Tadly's defense. It supported Tadly's claim that he acted reasonably in grabbing the gun because he was aware of the decedent's violent history and believed he needed the gun to protect himself and others and to get the decedent's attention, so that the decedent would listen to Tadly and stop making trouble or leave.

It was crucial to Tadly's defense to the included offense of reckless manslaughter that Tadly demonstrate that his initial act of grabbing the gun was reasonable, and not reckless. If Tadly failed to make this showing, the jury could find that he acted recklessly in causing the death of the decedent, even if it found that the gun discharged accidentally during a struggle between Tadly and the decedent. In other words, absent a reasonable explanation by Tadly for why he picked up the gun in the first place, the jury could find him guilty of reckless

manslaughter notwithstanding its belief that Taddy was not otherwise at fault for the discharge of the gun itself. Given the vital importance of the precluded evidence to Taddy's defense, I believe the Circuit Court erred in excluding the evidence and that this error was not harmless beyond a reasonable doubt.

B.

It is not clear why Taddy apparently declined to assert a claim of self-defense or the defense of others. In any event, the admissibility of the decedent's prior acts of violence did not depend on Taddy's asserting a claim of self-defense or the defense of others. The precluded evidence was relevant to Taddy's state of mind -- to negate the claim that he acted recklessly in causing the decedent's death -- and therefore was admissible under Hawai'i Rules of Evidence Rule 404(b) (Supp. 2012).

C.

Taddy was very familiar with the decedent's background and history. The evidence showed that Taddy was the decedent's good friend and that Taddy's son considered the decedent to be his "big brother." Taddy also proffered at the pre-trial hearing at which the Circuit Court issued its ruling that he and his son knew about the decedent's violent tendencies and prior acts of violence because the decedent bragged about them.

The decedent's prior acts of violence were conditionally relevant. That is, their relevance and admissibility depended upon Taddy first laying a foundation that he had knowledge of the details of the decedent's prior acts of violence and that this knowledge caused him to believe it was necessary to pick up the gun for protection and to get the decedent's attention. See State v. Lui, 61 Haw. 328, 329-31, 603 P.2d 151, 153-54 (1979); State v. Maddox, 116 Hawai'i 445, 457-60, 713 P.3d 592, 604-07 (App. 2007). In my view, the Circuit Court erred in ruling pre-trial that the decedent's prior acts of violence were inadmissible without giving Taddy the opportunity

to lay the necessary foundation to establish the relevance of the proffered evidence at trial.^{1/} If the necessary foundation was laid, I believe Tadyly was entitled to introduce the precluded evidence to demonstrate that his actions in picking up the gun were reasonable, and not reckless. See State v. Culkin, 97 Hawai'i 206, 224, 35 P.3d 233, 251 (2001).

II.

For these reasons, I respectfully dissent.

^{1/}Although the Circuit Court stated that it was granting the prosecution's motion in limine to preclude the decedent's prior acts of violence "without prejudice," it advised Tadyly that he was precluded from introducing such evidence to show his state of mind. The only possible exception noted by the Circuit Court to its ruling was that Tadyly might be able to introduce the evidence if he could show that the decedent had a weapon in his hand before Tadyly grabbed the gun. Tadyly, however, acknowledged that the decedent did not have a weapon. On appeal, the State does not contend that the Circuit Court's ruling was conditional or subject to change.