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Intermediate Court of Appeals
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NO. 30353

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
NOLAN L.K. CRABBE, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 09-1-1175)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Reifurth, and Ginoza, JJ.)

Defendant-Appellant Nolan L.K. Crabbe (Crabbe) appeals from the Judgment of Conviction and Sentence filed on January 27, 2010 in the Circuit Court of the First Circuit¹ (circuit court). A jury convicted Crabbe of Robbery in the Second Degree, in violation of Hawaii Revised Statutes § 708-841(1)(a) (Supp. 2010).

On appeal, Crabbe contends the circuit court erred (1) in failing to instruct the jury on the included offense of Theft

¹ The Honorable Dexter D. Del Rosario presided.

in the Fourth Degree and this court should reverse State v. Haanio, 94 Hawai'i 405, 16 P.3d 246 (2001), which holds that failure to give such an instruction would be harmless in this case; (2) by denying his request to continue the trial to allow him to interview a prosecution witness; and (3) by denying his motion for a new trial, which was based on the court's failure to continue the trial.

Upon careful review of 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, as well as the relevant statutory and case law, we conclude that Crabbe's appeal is without merit.

Assuming arguendo the circuit court erred in failing to instruct the jury on the included offense of Theft in the Fourth Degree, such error was harmless because the jury convicted Crabbe of the charged offense of Robbery in the Second Degree. Haanio, 94 Hawai'i at 415-16, 16 P.3d at 256-57. We must decline Crabbe's request to overturn this Hawai'i Supreme Court decision.

The circuit court did not err (1) in refusing to continue the trial because Crabbe said he needed more time to interview a prosecution witness and (2) by denying Crabbe's motion for a new trial. State v. Lee, 9 Haw. App. 600, 603-04, 856 P.2d 1279, 1281-82 (1993); State v. Yamada, 108 Hawai'i 474, 478, 122 P.3d 254, 258 (2005). Crabbe made no attempt to contact the prosecution witness prior to trial, refused the circuit court's offer of a recess to allow defense counsel to speak with the witness, was able to cross-examine the witness at trial, and fails to show how interviewing the witness prior to trial would have aided his defense. Assuming arguendo there was error, it was harmless.

Therefore,

The Judgment of Conviction and Sentence filed on January 27, 2010 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 14, 2011.

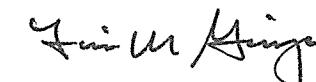
On the briefs:

Anosh H. Yaqoob
for Defendant-Appellant.

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Daniel R. Foley
Presiding Judge


Lawrence M. Reiter
Associate Judge


Jim M. Hinge
Associate Judge