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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I,
Respondent/Plaintiff-Appellee,

vs.

ADRIAN-JOHN C. BRINGAS, also known as ADRIANJOHN BRINGAS,
Petitioner/Defendant-Appellant.

SCWC-17-0000543

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-17-0000543; CR. NO. 1PC161000617)

DISSENTING OPINION BY WILSON, J.

Adrian-John C. Bringas ("Bringas") was convicted of murder in the second degree. The jury returned a verdict form indicating that Bringas was guilty as charged. However, the jury responded incorrectly to a special interrogatory question relating to the defense of mutual consent. The jury was properly instructed that they were to answer the special interrogatory question if and only if they found Bringas not guilty of murder in the second degree and other lesser included

offenses, or if they were unable to reach a unanimous verdict as to these offenses and instead found him guilty of the lesser-included offense of assault in the third degree. Although the jury was instructed to consider the mutual affray instruction only if they found the defendant not guilty, the jury indicated on the jury verdict form that they found Bringas guilty of murder, and in violation of the court's instructions they answered the special interrogatory. Their answer stated that the prosecution had not proven beyond a reasonable doubt that a fight between Bringas and the decedent was not entered into by mutual consent. Consistent with the jury's improper answer is its conclusion that Bringas did not cause the fight; a conclusion also consistent with his defense of self-defense.

Bringas moved for a new trial on the basis that the answer to the special interrogatory on the verdict form demonstrated that the jury had misunderstood their instructions; the Circuit Court of the First Circuit ("circuit court") denied his motion. The Intermediate Court of Appeals ("ICA") affirmed Bringas' conviction, holding that the circuit court did not err in denying his new trial motion and that the answering of the special interrogatory was merely "surplusage[.]" State v. Bringas, No. CAAP-17-0000543, 2018 WL 4927734, at *9 (App. Oct. 11, 2018) (mem.).

By both finding Bringas guilty of the charge of murder in the second degree and answering a question that it was instructed to answer only if it found him not guilty of the same offense, the jury delivered an "irreconcilably inconsistent" verdict. Miyamoto v. Lum, 104 Hawai'i 1, 8, 84 P.3d 509, 516 (2004) (quoting Carr v. Strode, 79 Hawai'i 475, 489, 904 P.2d 489, 503 (1995)). Convictions supported by irreconcilable verdicts cannot stand. See Territory v. Thompson, 26 Haw. 181, 184 (1921).

I. BACKGROUND

On April 19, 2016, Bringas was charged by indictment in the circuit court with one count of murder in the second degree (Count 1), in violation of Hawai'i Revised Statutes ("HRS") § 707-701.5,¹ and one count of assault in the second degree (Count 2), in violation of HRS § 707-711(1)(a), (b), and/or (d).² As to the first count, the State alleged that

¹ HRS § 707-701.5 (2014) provided:

(1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person.

(2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656.

² HRS § 707-711 (2014) provided in relevant part:

(1) A person commits the offense of assault in the second degree if:

(a) The person intentionally or knowingly causes substantial bodily injury to another;

(continued . . .)

Bringas intentionally or knowingly caused the death of W, a minor. As to the second count, the State alleged that Bringas intentionally or knowingly caused substantial injury to, recklessly caused substantial bodily injury to, and/or intentionally or knowingly caused bodily injury with a dangerous instrument to C.U., the older brother of W.

At trial, the State and the defense presented evidence describing a series of altercations that occurred on or near Ahonui Street in Kalihi on April 12, 2016.³ It was undisputed that during these altercations, Bringas stabbed W in the chest, causing his death, and stabbed C.U. in the leg. The State argued that Bringas was the aggressor, while the defense argued that he acted in self-defense.

Elaine Prescott, a family friend of C.U. and W, testified that around 10:00 p.m. on April 12, 2016, she saw W and Bringas talking behind a dumpster. When she turned around

(. . . continued)

(b) The person recklessly causes serious or substantial bodily injury to another;

. . . .

(d) The person intentionally or knowingly causes bodily injury to another with a dangerous instrument;

. . . .

(2) Assault in the second degree is a class C felony.

³ The Honorable Paul B.K. Wong presided.

to talk to her boyfriend, R.K., she overheard Bringas ask W if W wanted to "buy a dime[,]"; W said he didn't have any money. When she turned back around, Bringas and W were fist fighting and shoving. She saw Bringas grab a "shining" object from his backpack, chase after W, and stab him. As Bringas was walking back toward the dumpster, Prescott pointed Bringas out to R.K., who then tackled Bringas, and the two of them fought. After R.K. and Bringas stopped fighting, Prescott and R.K. saw C.U. Prescott pointed out Bringas to C.U., while Bringas was trying to walk away, and told C.U. to grab him. C.U. and Bringas fought. During the fight, Bringas stabbed C.U. in his right leg. Prescott walked back to W, knelt next to him, and tried to limit the bleeding with his shirt.

R.K. testified that he was walking away from Prescott when he heard a commotion behind him; when he turned back around, he saw W and Bringas throwing punches at each other. Prescott pointed Bringas out to R.K. after W stopped fighting with Bringas and while Bringas was running away. R.K. then fought with Bringas but ran away when he saw a "shining" object in Bringas' hand. He then pointed out Bringas to C.U., saw C.U. hit Bringas with an object, and then saw the two of them fight before C.U. walked away. He later found out that C.U. had been stabbed. When Bringas walked away from C.U., R.K. and another friend chased him down the street.

C.U. testified that he ran over to Prescott and R.K. when he heard a girl screaming, confronted Bringas, saw that Bringas had something in his hand, hit him, and then started fighting with him. When Bringas was on his knees after being hit, he grabbed C.U.'s left hand and stabbed him in the leg. After C.U. was stabbed, he tried to run away.

Three additional witnesses testified that they saw W lying on the ground; one said W was on his own at first, while the two others testified that they saw a girl next to W, either shouting or crying with his head in her lap. All three witnesses also testified that they saw Bringas being chased and attacked while trying to defend himself; one said Bringas was being chased by one male, while the two others said they saw him being chased by two males.

Two police officers testified about their interactions with Bringas following the altercations. Officer Scott Matsumura testified that he talked to Bringas while Bringas was sitting in the bed of a truck at a nearby gas station and bleeding from fresh wounds; Bringas seemed uncooperative and unhappy to see him. Officer Nicholas Schlapak ("Officer Schlapak") testified that he also talked to Bringas at the gas station, and that Bringas seemed uncooperative, but that Bringas had told him that he got "mobbed" and "robbed" of his wallet and his bag and that "[i]t was self-defense." Officer Schlapak also

accompanied Bringas to the hospital, where he heard Bringas tell the nurses he had received his injuries from falling down. An emergency medicine physician, Dr. Gregory Suarez ("Dr. Suarez"), also testified that Bringas told him he had been attacked. Dr. Suarez described Bringas as generally being uncooperative at the hospital. Dr. Suarez received information from EMS staff that Bringas had been assaulted with an unknown sharp object and struck twice in the head.

Bringas testified in his own defense. He testified that the chain of his bike fell off when he was riding on Ahonui Street, so he stopped and attempted to fix it with a fixed blade knife he was carrying in his backpack. After he fixed his bike, W walked up to him, asked him what happened, and offered him some marijuana to smoke. W also offered to sell him some drugs, but Bringas declined. Prescott came up and smoked with W, which Bringas said "lightened the situation[.]" As Bringas started gathering up trash from his bag and from the repairs to his bike, W and Prescott walked away.

Bringas testified that after he walked over to a dumpster to deposit the trash, he was hit from behind and fell to the ground. He tried to run, but kept falling and getting punched, kicked, and stomped. Two men confronted him in the middle of the street, and came towards him with something in their hands. He pulled the knife he had been using to fix his

bike out from his waistband and told them to get back. He saw Prescott holding his backpack with its contents on the ground, and assumed he was being robbed, so he told them they could take his bag but asked them to let him go. Bringas was hit and fell to the ground again.

Bringas testified that the two men hit him with something all over his body, and that he tried to block his head and flailed his knife around in an attempt to ward them off. He tried to run away but was pursued by two males, one of whom hit him with something; he was pinned to the ground and beaten again, and swung the knife again to get them off. He ran as fast as he could down three more streets and jumped into the bed of a truck which pulled into a gas station. Police officers arrived, and although he was happy to see them, Bringas testified that he wasn't cooperative because his mind was "scrambled," and he couldn't talk or speak. He told the officers that he had been mugged or robbed. An ambulance came and took him to the hospital, where he had difficulty talking and understanding what was going on.

Following the close of evidence, the circuit court instructed the jury. As to the first count of the indictment, the jury was instructed as to the elements of murder in the second degree and instructed that if and only if it found the defendant not guilty of murder in the second degree, or if it

was unable to reach a unanimous verdict, it was to consider the lesser included offense of manslaughter. The jury was then instructed as to the elements of manslaughter. It was instructed that if and only if it found the defendant not guilty of manslaughter, or if it was unable to reach a unanimous verdict, it was to consider the lesser included offense of assault in the first degree. The jury was similarly instructed with regard to the lesser included offenses of assault in the second degree and assault in the third degree.⁴ In other words, the jury was instructed to consider the offense of assault in the third degree if and only if it found Bringas not guilty of murder in the second degree, manslaughter, and the two greater assault offenses, or if it was unable to reach a unanimous verdict on all the greater offenses. After being instructed as to the elements of assault in the third degree, the jury was instructed that, if assault in the third degree was proven, it was to "consider whether the fight or scuffle was entered into

⁴ HRS § 707-712 (2014) provides:

(1) A person commits the offense of assault in the third degree if the person:

(a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or

(b) Negligently causes bodily injury to another person with a dangerous instrument.

(2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

by mutual consent[.]” The court specifically read the mutual consent interrogatory to the jury as follows:

In Count 1 of the indictment, if you find that the prosecution has proven the offense of Assault in the Third Degree beyond a reasonable doubt, then you must also consider whether the fight or scuffle was entered into by mutual consent, whether expressly or by conduct.

You must determine whether the prosecution has proven beyond a reasonable doubt that the fight or scuffle was not entered into by mutual consent. This determination must be unanimous and is to be indicated by answering “yes” or “no” on a special interrogatory that will be provided to you.

For the second count, the jury received instructions defining the elements of assault in the second degree and the lesser included offense of assault in the third degree. As with the first count, the jury was again instructed that if the government proved assault in the third degree it was to “consider whether the fight or scuffle was entered into by mutual consent.” Once again, the jury was advised that it would receive a special interrogatory asking it whether the prosecution had proven beyond a reasonable doubt that the fight was not entered into by mutual consent. The jury was also instructed that self-defense is a defense to the offenses of murder in the second degree, manslaughter, and all three assault offenses.

The verdict form for the first count consisted of six options--not guilty, guilty of murder in the second degree, guilty of manslaughter, guilty of assault in the first degree, guilty of assault in the second degree, and guilty of assault in

the third degree--and one special interrogatory about mutual consent. The jury returned the verdict form with "x" marks indicating both that they found Bringas guilty of murder in the second degree and that the prosecution had not proven beyond a reasonable doubt that the fight was not entered into by mutual consent. The verdict form for the first count read as follows:

As to Count I:

 WE THE JURY in this case, find the Defendant not guilty.

 x WE THE JURY in this case, find the Defendant guilty as charged of Murder in the Second Degree.

 WE THE JURY in this case, find the Defendant guilty of the included offense of Manslaughter.

 WE THE JURY in this case, find the Defendant guilty of the included offense of Assault in the First Degree.

 WE THE JURY in this case, find the Defendant guilty of the included offense of Assault in the Second Degree.

 WE THE JURY in this case, find the Defendant guilty of the included offense of Assault in the Third Degree.

SPECIAL INTEROGATORY

Question:

Did the prosecution prove beyond a reasonable doubt that the fight or scuffle was not entered into by mutual consent? (Your answer to this question must be unanimous.)

Answer:

Yes No x

On the verdict form for the second count, the jury indicated both that Bringas was not guilty of either assault in the second or third degree and that the prosecution had proven beyond a

reasonable doubt that the fight was not entered into by mutual consent.

The verdict forms were received by the clerk of the court from the jury foreperson. Before reading the verdict, the clerk turned to the judge and engaged in a conversation only heard by the judge. At that time the clerk informed the judge of the conflict between the finding of guilt and the answer to the interrogatory. The court did not inform the attorneys of the conflict and instead instructed the clerk to read the verdict.⁵ The clerk read the jury verdict forms for each count without any reference to the jury's answers to the special interrogatory questions on each verdict form.⁶ Bringas was found

⁵ We agree with the Majority that the better course would have been to inform counsel immediately of the conflict posed by the special interrogatory. Informed of the conflict, counsel would have been equipped to request further reading of the instructions and continued deliberations.

⁶ During the later hearing on Bringas' motion for a new trial, defense counsel raised to the court his recollection that when the verdict was received and read, the court appeared to have been made aware of the jury's answering of the special interrogatory questions:

If I could recall, Your Honor, the chronology of events, the Court received a communication that the jury had reached a verdict. We convened, the foreperson was identified, the foreperson provided that the envelope with the verdict forms within it, the Court received it first. At that point in time the Court, I'm assuming, read the verdict and then handed it to the court clerk.

The court clerk then read the verdict and there was a pause. And I picked up on that pause and I was a little bit curious. I believe at that point in time the court clerk leaned over to Your Honor, I guess to inquire on what to do with that. Now, I wasn't privy to that conversation, that conversation was off the record, but I can only assume or imagine that the Court

(continued . . .)

guilty of murder in the second degree in Count 1, and found not guilty of assault in the second degree and all other included offenses in Count 2:

THE COURT: Has the jury reached a verdict in this case?

THE FOREPERSON: It has.

THE COURT: Okay. And have the verdict forms been signed and dated?

THE FOREPERSON: Yes.

THE COURT: [Foreperson], can you please hand the verdict form in that folder to [the clerk] and you may be seated.

Will the clerk of the court please read the verdict of the jury.

THE CLERK: State of Hawaii, Circuit Court of the First Circuit, case number 1PC 161000617, State of Hawaii versus Adrian-John C. Bringas. Verdict.

"As to Count 1, we, the jury in this case, find the defendant guilty as charged of the offense of Murder in the Second Degree.

As to Count 2, we, the jury in this case, find the defendant not guilty.

Dated 2/17/17. Signed [Foreperson]," Your Honor.

(. . . continued)

instructed the court clerk not to read that portion of the verdict form. And I'm just guessing so I don't know, Your Honor.

So the -- the court clerk went on to read the verdict and, again, the verdict that was read was simply what appeared, I guess, on the top boxes of both verdict forms. So that would be the second box on the Murder, which is the defendant is guilty as charged of the offense of Murder in the Second Degree and then the second verdict being the jury in this case finds the defendant not guilty. And neglected to read on both verdict forms the special interrogatory at the bottom.

Neither the court nor the State responded to or disputed this recollection.

After the reading of the verdict, the court asked defense counsel if there was a request for a poll of the jury; deprived of the knowledge of the failure of the jury to follow the court's instructions, defense counsel replied that there was not. The court then adjudged Bringas guilty of murder in the second degree as to the first count and not guilty as to the second count. The jury was excused to the jury deliberation room.

After a discussion about sentencing and a recess, the court went back on the record outside the presence of the jury. Pursuant to an off-record discussion, the court raised the fact that on the verdict form for the first count the jury had "convict[ed] the defendant of Murder in the Second Degree but also answered special interrogatory that is normally reserved for the Assault 3, Mutual Affray instruction[.]" The court proposed that the jury be ordered to return the following Tuesday to "give Court and counsel some time to research what, if anything, can be done at this point in time." Neither the State nor the defense objected to the court's proposal. Defense counsel did, however, note for the record that there had been a pause when the court clerk had read the verdict, that defense counsel had inquired about it with the court clerk, and that the clerk had informed him that "there was a sort of a peculiarity

on the verdict form." The court responded to defense counsel by stating: "you were correct to do so [counsel]."

The jury returned to the courtroom and the court began discussing a time at which they would be able to return the following Tuesday. However, after going off the record during this scheduling discussion, the court announced that it was reversing its previous order for the jury to return the following Tuesday, and instead excused the jury. The State and the defense did not object to having the jury excused.

Bringas filed a motion for a new trial on the basis that "the jury was . . . confused and did not fully understand the jury instructions[,]" as demonstrated by their answering of the special interrogatory. He argued that a new trial was "required in the interest of justice under [Hawai'i Rules of Penal Procedure ("HRPP")] Rule 33 given the overwhelmingly apparent confusion and misunderstanding regarding the instructions and verdict forms"⁷ and that "the verdict appear[ed]

⁷ HRPP Rule 33 (2012) provides:

The court on motion of a defendant may grant a new trial if required in the interests of justice. If trial was by the court without jury, the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial shall be made within 10 days after verdict or finding of guilty or within such further time as the court may fix during the 10-day period. The finding of guilty may be entered in writing or orally on the record.

to be so manifestly against the weight of the evidence as to indicate bias, prejudice, passion, or misunderstanding of the charge of the court on the part of the jury, under HRS § 635-56.”⁸

The circuit court concluded that “a new trial [was] not required in the interest of justice and . . . accordingly and respectfully [denied] [Bringas’] motion for new trial.” The court entered judgment against Bringas for murder in the second degree and sentenced him to imprisonment for a term of life with the possibility of parole.

Bringas appealed his conviction to the ICA. His first point of error on appeal was that “[t]he trial court erred in failing to resolve the jury’s inconsistent verdicts prior to having them read in open court, erred in choosing which part of the verdict forms to read and which to omit, and abused its discretion in denying the Motion for a New Trial.”

The ICA affirmed Bringas’ conviction, holding that the circuit court did not err or abuse its discretion in denying Bringas’ motion for a new trial. Bringas, 2018 WL 4927734, at

⁸ HRS § 635-56 (2016) provides:

In any civil case or in any criminal case wherein a verdict of guilty has been rendered, the court may set aside the verdict when it appears to be so manifestly against the weight of the evidence as to indicate bias, prejudice, passion, or misunderstanding of the charge of the court on the part of the jury; or the court may in any civil or criminal case grant a new trial for any legal cause.

*9. Although the ICA held that "the record is clear that the jury did not follow the Circuit Court's instruction to answer the special interrogatory question only if it did not reach a verdict on a greater offense[,]" id. at *6, it concluded that "the superfluous answering of the special interrogatory did not undermine or cast any doubt upon the jury's verdict, much less create an irreconcilable inconsistency with the jury's verdict that Bringas was guilty of Murder Second[,]" id. at *8. The ICA additionally held that "the unnecessary answering of the special interrogatory" was "surplusage that can be disregarded." Id. at *9.

Bringas filed an application for writ of certiorari with this court, presenting the following three-part question for our review:

Whether the ICA gravely erred in (1) affirming the circuit court's failure to resolve the jury's inconsistent verdicts prior to having them read in open court; (2) concluding the circuit court did not err in choosing which part of the verdict forms to read and which to omit; and (3) holding that the circuit court did not abuse its discretion in denying Bringas' motion for a new trial.

II. STANDARD OF REVIEW

The granting or denial of a motion for new trial is within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion. It is well-established that an abuse of discretion occurs if the trial court has clearly exceeded the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant.

State v. Austin, 143 Hawai'i 18, 29, 422 P.3d 18, 29 (2018)

(internal quotation marks, brackets, and citations omitted).

III. DISCUSSION

A. The Jury's Inconsistent Verdicts Are Irreconcilable.

If the jury's responses on a verdict form are "fatally in conflict" in light of the entire verdict, then the verdict must be set aside. See Dunbar v. Thompson, 79 Hawai'i 306, 312, 901 P.2d 1285, 1291 (App. 1995) (quoting Vieau v. City & Cnty. of Honolulu, 3 Haw. App. 492, 499, 653 P.2d 1161, 1166 (1982)).

The Supreme Court of the Territory of Hawai'i undertook an analysis of inconsistent verdicts among multiple defendants in Thompson, 26 Haw. at 184. In that case, Thompson and his three co-defendants were charged with larceny in the first degree arising from the theft of cattle. Id. at 181-82. The co-defendants were "jointly indicted and tried before the same jury, for the same offense" and the evidence was "identically the same against all[,]" id. at 184, yet the jury found Thompson guilty as charged and his co-defendants not guilty, id. at 182. The Supreme Court of the Territory of Hawai'i reversed Thompson's conviction, holding that the jury's verdicts were "neither responsive to the evidence, in accord with reason nor reconcilable with their oaths as jurymen," and that a jury could not "be permitted to make a difference in their cases by a purely arbitrary finding." Id. at 184. We have previously cited Thompson when considering inconsistent verdict arguments in both criminal and civil cases. See State v. Gager, 45 Haw.

478, 484, 370 P.2d 739, 743 (1962); Kapiolani Commercial Center v. A & S P'ship, 68 Haw. 580, 584, 723 P.2d 181, 184 (1986); see also Comment, Inconsistent Verdicts in a Federal Criminal Trial, 60 Colum. L. Rev. 999, 1002 n.18 (1960) (assuming, based on Thompson, that Hawai'i would take the position that an inconsistency between an acquittal and a conviction in the trial of a single defendant on multiple counts would constitute reversible error).

Since Territory v. Thompson, our inconsistent verdict jurisprudence has developed mainly in the context of civil cases. In such cases, we have consistently held that "[a] conflict in the jury's answers to questions in a special verdict will warrant a new trial only if those answers are irreconcilably inconsistent, and the verdict will not be disturbed if the answers can be reconciled under any theory." Miyamoto, 104 Hawai'i at 8, 84 P.3d at 516 (quoting Carr, 79 Hawai'i at 489, 904 P.2d at 503). "The theory, however, must be supported by the trial court's instructions to the jury." Id. (quoting Carr, 79 Hawai'i at 489, 904 P.2d at 503). This requirement is consistent with the general rule that "juries are presumed to be reasonable and follow all of the trial court's instructions." Myers v. South Seas Corp., 76 Hawai'i 161, 165, 871 P.2d 1231, 1235 (1994). "Answers to a special verdict 'are to be construed in the context of the surrounding circumstances

and in connection with the pleadings, instructions, and issues submitted.'" Miyamoto, 104 Hawai'i at 8, 84 P.3d at 516 (quoting Dunbar, 79 Hawai'i at 312, 901 P.2d at 1291).

Before concluding that a verdict is irreconcilably inconsistent, "the court must search for a reasonable way to read the verdicts as expressing a coherent view of the case, and must exhaust this effort before it is free to dismiss the jury's verdict and remand the case for a new trial." Carr, 79 Hawai'i at 489, 904 P.2d at 503 (quoting Toner v. Lederle Lab'ys, 828 F.2d 510, 512 (9th Cir. 1987)). However, if the court cannot arrive at a coherent reading of the verdict, "then the answers are fatally in conflict" and must be set aside. Dunbar, 79 Hawai'i at 312, 901 P.2d at 1291 (quoting Vieau, 3 Haw. App. at 499, 653 P.2d at 1166). For example, in Myers, the jury was given an instruction that would not have permitted it to make a finding of negligence without a concurrent finding of legal cause. 76 Hawai'i at 164, 871 P.2d at 1234. When the jury found that the defendant corporation was negligent, but not the legal cause of the decedent's injuries, this court held that it had "returned an irreconcilable verdict[.]" Id. Likewise, in Costales v. Rosete, the jury provided irreconcilably conflicting answers to special verdict questions where it answered them in a "mathematically inconsistent" manner, apportioning fault in one

question differently than it divided up general damages in another. 133 Hawai'i 453, 467, 331 P.3d 431, 445 (2014).

In the present case, had the jury properly followed its instructions, it would not have answered that it found Bringas guilty of murder in the second degree while also answering the special interrogatory question.⁹ Contrary to the Majority's holding, the jury's verdict as to the first count was irreconcilably inconsistent because it indicated that the jury made two entirely conflicting findings. The jury stated that it found Bringas guilty as charged of murder in the second degree. But, in conflict, it also answered the special interrogatory question, which it was instructed to do if and only if it found Bringas not guilty of murder in the second degree, or if it was unable to reach a unanimous verdict as to whether he was guilty

⁹ Whatever actually caused the jury to act as it did is irrelevant to our determination of this case. As the Supreme Court of Alaska held in the course of reversing a conviction based on inconsistent verdicts in a criminal trial:

[W]e can see no basis to assume . . . that inconsistent verdicts are the product of a jury's disposition toward treating the accused leniently; nor can we see a basis for assuming that, in allowing inconsistent jury verdicts in criminal trials to stand, we run only "the risk that an occasional conviction may have been the result of compromise." The truth is simply that we do not know, nor do we have any way of telling, how many inconsistent verdicts are attributable to leniency, to compromise, or, for that matter, to outright confusion on the part of the jury.

DeSacia v. State, 469 P.2d 369, 377 (Ala. 1970) (quoting United States v. Carbone, 378 F.2d 420, 423 (2d Cir. 1967)); see also Price v. State, 949 A.2d 619, 630 (Md. 2008).

of murder in the second degree. As noted, the jury could not consider whether Bringas engaged in a mutual affray unless it found him not guilty of murder in the second degree or if it was unable to reach a unanimous verdict on that charge. It is impossible to reconcile the clear instruction that Bringas could only be found to have entered into a mutual affray if he were not guilty of murder with the jury's opposite conclusion that he did enter into a mutual affray but was nonetheless guilty of murder.

Jury confusion and irreconcilable conflict as to the application of the mutual consent instruction also arose as to the assault in the second degree charge in Count 2. Again, the jury's answering of the special interrogatory in Count 2 was in conflict with the instruction that it should do so only if it found Bringas guilty of assault in the third degree. The jury acquitted Bringas of assault in the second degree and assault in the third degree, but nonetheless incorrectly answered the mutual consent special interrogatory. The jury answered that the State had proven beyond a reasonable doubt that Bringas had not entered into the fight or scuffle by mutual consent. In so doing the jury verdict supported the conclusion that the evidence proved beyond a reasonable doubt that Bringas did not initiate the fight; the fight was started by C.U., and Bringas acted in self-defense. Thus, the jury's verdict is consistent

with the mistaken understanding that self-defense applied as a defense only if it was proven that Bringas did not start the altercation. Under this mistaken view, self-defense was not an applicable defense if Bringas consented to the fight.

In Count 1, the jury's answer to the mutual affray interrogatory found that the prosecution failed to prove beyond a reasonable doubt that Bringas and W did not enter the altercation mutually. Thus, unlike Count 2, the jury concluded in Count 1 that Bringas was mutually responsible for the altercation that led to W's death. The conflict--between the jury's answering of the interrogatory and the court's instruction on mutual affray--in Count 2 supports the conclusion that the jury similarly misunderstood¹⁰ the self-defense instruction in Count 1 and mistakenly assumed self-defense would only apply if, as in Count 2, the State proved beyond a

¹⁰ In response to the Dissent's position that "the jury misunderstood the self-defense instruction and mistakenly assumed self-defense would only apply if, as in Count 2, the State had proven that Bringas had not consented to the fight[.]" the Majority states that "recognizing the 'sanctity of jury deliberations,' Oahu Publ'ns. Inc., 133 Hawai'i at 498, 331 P.3d at 477, we resist 'inquiry into [the] jury's thought processes' in reaching its verdict, Pierce, 940 F.3d at 823, and there is nothing in the record here to suggest the jury was confused about self-defense." Majority at 27-28, n.16. Respectfully, we do not need to "inquir[e] into [the] jury's thought processes" because the jury's conflicting actions (a failure to follow clear instructions), demonstrate that the jury misunderstood the self-defense instruction. Furthermore, if the conflicting responses of the jury are given their due, Bringas' conviction for murder in the second degree and the response to the special interrogatory that could only be answered if the jury found him guilty of assault in the third degree cannot be reconciled.

reasonable doubt that W, not Bringas initiated the altercation.¹¹ In other words, the flawed application of the mutual consent instruction to the assault in the second degree charge in Count 2 is consistent with the jury's incorrect application of the mutual consent instruction to Bringas' claim of self-defense in Count 1. Unlike Count 2, in Count 1 the jury found the prosecution did not prove beyond a reasonable doubt that the fight was not entered into by mutual consent. It is consistent with the jury's incorrect application of the mutual affray instruction to Bringas' claim of self-defense in Count 2, that the jury similarly improperly concluded it must reject Bringas' self-defense claim to the second-degree murder charge in Count 1 because the fight with W was a mutual affray and thus not initiated solely by W.¹² Underlying such a rejection of Bringas'

¹¹ The jury misapplied the mutual consent interrogatory by requiring Bringas to prove he did not enter into a mutual affray. Were the jury to properly apply the court's instruction, it would not have reached the mutual consent instruction in either Count 1 or Count 2 and therefore have properly understood that Bringas' could succeed on his self-defense claim notwithstanding a finding that the fight was entered into by mutual consent.

¹² The Majority finds no conflict between the verdicts. Majority at 17. However, the decision of the jury to consider whether the fight occurred by mutual consent specifically conflicted with the instruction that it should only do so if Bringas was guilty of assault in the third degree. The Majority posits that the jury's mistaken application of the law was justified because the jury thought their duty was to determine whether the fight arose by mutual consent, regardless of whether the defendant was guilty of murder in the second degree or any of the lesser included offenses. But such a mistake by the jury demonstrates that the irreconcilable conflict may have prejudiced Bringas; the jury would have wrongly applied the law and deprived Bringas of his due process right to a proper application of

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self-defense claim is the false assumption that self-defense cannot apply to a mutual affray. Had the jury correctly followed the jury instructions, it would have only considered the mutual consent interrogatory if it found Bringas guilty of assault in the third degree. No misunderstanding by the jury that self-defense was unavailable to Bringas if he entered into a mutual affray would have been possible. Therefore, the conflicts between the jury's verdict and its answers to the mutual affray special interrogatories evinces a violation of Bringas' right to have the jury consider the self-defense instruction without regard to whether he entered into the fight by mutual consent.

Thus, the circuit court abused its discretion by denying Bringas' motion for a new trial and subsequently convicting him of murder in the second degree.

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both the self-defense instruction and the mutual consent special instruction. See Briones v. State, 74 Haw. 442, 453, 848 P.2d 966, 972 (1993) (holding that "the right to a fair jury trial includes the right to have all charges clearly presented to the jury in order to obviate the possibility of inconsistent findings of fact[.]"). Briones also involved a conflict between a jury verdict (attempted first-degree murder) and the failure of the jury to follow jury instructions (that it should not find the defendant guilty of attempted first degree murder and guilty on Counts II and III, second degree murder and attempted second degree murder, respectively). Briones, 74 Haw. at 453, 848 P.2d at 972. The Majority declines to recognize the analogous conflict in the instant case between the verdict of second-degree murder and the jury's wrongful understanding of the mutual consent special interrogatory read to it by the court.

B. The Devoid of Ambiguity Standard Should Apply to Criminal Case Verdicts.

As noted, the standard applied in Hawai'i to answers to jury interrogatories bearing ambiguity in criminal cases arose from the territorial court of Hawaii in 1921. Territory v. Thompson, 26 Haw. 181, 184 (1921). To receive a new trial, a defendant found guilty by a jury that responds with ambiguity to jury instructions must show that the answers were irreconcilably inconsistent and that there is no theory upon which the answers can be reconciled: "[a] conflict in the jury's answers to questions in a special verdict will warrant a new trial only if those answers are irreconcilably inconsistent, and the verdict will not be disturbed if the answers can be reconciled under any theory." Miyamoto, 104 Hawai'i at 8, 84 P.3d at 516.

Since Thompson, courts have examined the importance of protecting the accused's right to a guilty verdict devoid of ambiguity. The Colorado Supreme Court, in Yeager v. People, held that "[a] verdict in a criminal case should be certain and devoid of ambiguity." 462 P.2d 487, 489 (Colo. 1969). In Yeager, the defendant was charged with the unlawful sale of a narcotic drug (cannabis) and the unlawful possession of cannabis. Id. After deliberation, the jury signed the guilty verdict form provided by the court for the second count (unlawful possession of cannabis). Id. However, for the first count (unlawful sale of a narcotic drug), the

jury drafted and signed its own verdict form rather than signing one of the two forms provided by the court. Id. Before the Supreme Court of Colorado, the defendant argued that his conviction for the first count (unlawful sale of a narcotic drug) should be reversed because the jury's verdict form for the first count (unlawful sale of a narcotic drug) did not include the intent element for proving unlawful sale of a narcotic drug. Id. at 488.

The Colorado Supreme Court held that the first count must be reversed because intent was required for count one unlawful sale of a narcotic drug, and "[t]he verdict prepared and returned by the jury relating to count one is at best, we believe, unclear as to whether the jury was finding that the defendant not only sold a narcotic drug but also possessed the particular specific intent above referred to." Id. (emphases added). Thus, the Colorado Supreme Court concluded that "[i]n any event, when the language of the verdict permits such uncertainty, defendant's conviction cannot be permitted to stand[,]" because "[a] verdict in a criminal case should be certain and devoid of ambiguity." Id. at 489.¹³ Other

¹³ The Majority contends that the Dissent "misconstrue[s] the [devoid of ambiguity] language" in Yeager. Majority at 23. Respectfully, the Majority oversimplifies and misconstrues Yeager by concluding that "the jury's verdict was ambiguous, in that it 'did not include all essential elements of the offense charged.'" Majority at 24. Contrary to the Majority's contention, the Yeager court's "devoid of ambiguity" analysis did not focus exclusively on the issue that the verdict "did not include all the essential elements of the offense charged." Rather, the Yeager court discussed the ambiguity of the

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jury's verdict phrase "as charged in the first count of the information" in relation to the intent element, as follows:

In this regard the Attorney General argues that the inclusion by the jury in their verdict of the phrase 'as charged in the first count of the information' means that the sale of the narcotic drug was determined by the jury to have been made in the manner described in count one. If that be the correct analysis of the situation, it is still a bit difficult to fathom why the jury nonetheless declined to sign the 'guilty' form of verdict given them by the court. That would have been the obvious thing to do if the jury had really been of the view that the defendant was guilty 'as charged in the First Count of the Information.'

On the other hand, the defendant argues that the phrase 'as charged in the First Count of the Information' is subject to the interpretation that the jury was of the view, and mistakenly so, that the first count of the information merely charged the defendant with the unlawful sale of a narcotic drug, irrespective of the intent with which the sale was made. And indeed, it could very well be said that by its choice of words the jury did in fact intend to find the defendant guilty of merely selling a narcotic drug and by its purposeful omission declined to find that at the time of the sale he also intended to induce or aid another to use or possess the drug in question. In any event, when the language of the verdict permits such uncertainty, defendant's conviction cannot be permitted to stand.

Yeager, 462 P.2d at 489. As in Yeager, the verdict in this case "permits such uncertainty[.]" because the jury stated that it found Bringas guilty as charged of murder in the second degree but also answered the special interrogatory question, which it was instructed to do if and only if it found Bringas not guilty of murder in the second degree or if it was unable to reach a unanimous verdict on those offenses, and the jury acquitted Bringas of assault in the second degree and assault in the third degree, but nonetheless incorrectly answered the mutual consent special interrogatory.

The Majority also states that "Colorado law is also clear that 'consistency of verdicts is not required.'" Majority at 24 (citing People v. Frye, 898 P.2d 559, 560 (Colo. 1995) (emphasis in original). Respectfully, the Colorado Supreme Court limited its holding in Frye to "circumstances such as those presented here[.]" Frye, 898 P.2d at 571 (holding that "consistency in verdicts is unnecessary in circumstances such as those presented here[.]"). Based on the Court's language limiting application of Frye to "circumstances such as those presented here," the holding in Frye does not create a broad rule that verdicts may be inconsistent. We do not argue that all inconsistent verdicts are ambiguous. Rather, we contend that in this criminal case, the verdict was not "certain and devoid of ambiguity."

jurisdictions agree that, “[t]he enforcement of the criminal law and the liberty of the citizen-are worthy of exactitude.” State v. Jones, 40 S.E.2d 458, 460 (N.C. 1946) (emphasis added); see also State v. Douglas, 676 S.E.2d 620, 623 (N.C. Cir. Ct. App. 2009) (stating that “[v]erdicts and judgments in criminal actions should be clear and free from ambiguity or uncertainty [because] enforcement of the criminal law and the liberty of the citizen demand exactitude.”) (emphasis added).

The “devoid of ambiguity” standard reflects a constitutionally grounded recognition that the deprivation of liberty at stake in a criminal case merits a higher standard of protection from an ambiguous jury verdict than in a civil case where a pecuniary interest is at stake. As Justice McKenna emphasizes in her dissent, the accused in a criminal case faces a loss of the fundamental right of liberty, as compared to pecuniary consequences posed by a civil case. Adoption of the “devoid of ambiguity” standard would permit retrial of ambiguous jury verdicts in criminal cases that would otherwise be without consequence under the standard applied by the territorial court of Hawai‘i in Thompson.

IV. CONCLUSION

Under either the “irreconcilable conflict” standard applied one hundred years ago in Thompson, or the “devoid of ambiguity” standard that evinces a greater concern for the

liberty interest at stake in criminal cases, Bringas' did not receive a fair trial. He should receive a new trial with answers to jury interrogatories that are devoid of ambiguity. The ICA's judgment on appeal and the judgment of the circuit court should be vacated, and this case should be remanded with instructions granting a new trial.

/s/ Michael D. Wilson

