

**Electronically Filed
Supreme Court
SCWC-17-0000543
31-AUG-2021
09:09 AM
Dkt. 43 OPD**

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

---o0o---

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)

AUGUST 31, 2021

DISSENTING OPINION OF MCKENNA, J.

I respectfully dissent. By finding Bringas guilty of murder in the second degree, but by then answering a question it was to answer only if it found Bringas not guilty of the same offense, the jury delivered an ambiguous and inconsistent verdict.

The majority initially concedes that the verdict was inconsistent. See title of Section IV.A of the majority opinion, "The Circuit Court Was Not Required to Reconvene the

Jury to Address or Resolve Its Inconsistent Verdict." It then analyzes two civil cases cited by Bringas, Dias v. Vanek, 67 Haw. 114, 679 P.2d 133 (1984), and Kanahele v. Han, 125 Hawai'i 446, 263 P.3d 726 (2011). The majority then posits the Bringas verdict, which it earlier characterized as "inconsistent," is not "ambiguous," because "the jury clearly found Bringas guilty of second-degree murder for the stabbing of W." See majority opinion.

The majority also opines that pursuant to Carr v. Strode, 79 Hawai'i 475, 489, 904 P.2d 489, 503 (1995), the court must first "search for a reasonable way to read the verdicts as expressing a coherent view of the case, and must exhaust this effort" before it vacates the jury's verdict and remands the case for a new trial. Id. (citing Toner v. Lederle Laboratories, 828 F.2d 510, 512 (9th Cir. 1987) (citations omitted)).

I believe it is inappropriate for the majority to apply opinions construing allegedly inconsistent or ambiguous verdicts in civil cases to verdicts in criminal cases. There are significant differences between civil and criminal cases. The standards of proof differ -- preponderance of the evidence compared to beyond a reasonable doubt. Also, in a criminal case, it is the government's burden to prove a defendant's guilt beyond a reasonable doubt. In a civil case, it might make sense

for a court to attempt to "search for a reasonable way to read the verdicts as expressing a coherent view of the case." In a criminal case, however, it is not a court's function to search for a way to sustain a conviction; it is the government's function to prove a defendant's guilt beyond a reasonable doubt.

Thus, I do not agree that our decision should be based on a civil rule that a jury's verdict will only be set aside if it is "irreconcilably inconsistent." Carr, 79 Hawai'i at 489, 904 P.2d at 503. Rather, our decision should be based on the rule applied by some courts that the verdict should be free from ambiguity and must be vacated if it does not convey the meaning and intention of the jury beyond a reasonable doubt. See, e.g., Yeager v. People, 462 P.2d 487, 489 (Colo. 1969) (stating that a verdict in a criminal case should be certain and devoid of ambiguity and holding that if a verdict does not convey beyond a reasonable doubt the meaning and intention of the jury, it must be vacated); see also Hyslop v. State, 68 N.W.2d 698, 702 (Neb. 1955) (stating that the jury's verdict in a criminal case should be free from ambiguity in light of the whole record); Barnhill v. State, 41 So.2d 329, 331 (Fla. 1949) (noting that the general rule in criminal cases is that a verdict must be certain and free from ambiguity). In this case, the verdict was not free from ambiguity and did not convey the meaning and intention of the jury beyond a reasonable doubt.

The majority suggests that the verdict in this case is free from ambiguity and is reconcilable because the jury could have reasonably concluded both that there was a mutual affray and that the circumstances of the mutual affray were not such that Bringas could have reasonably believed that deadly force was necessary to protect himself. This analysis, however, ignores the court's clear instruction to the jury that it was to consider mutual affray only if it found Bringas not guilty of murder in the second degree as well as its lesser-included offenses. Thus, the verdict is inconsistent and ambiguous, and it must be vacated because it does not convey beyond a reasonable doubt the meaning and intention of the jury.

/s/ Sabrina S. McKenna

