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NO. CAAP-24-0000511

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
KAI DELA CRUZ, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CPC-19-0001711)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, Hiraoka and Wadsworth, JJ.)

Kai **Dela Cruz** was found guilty of murder in the second degree and sentenced to life with the possibility of parole. He appealed from the *Judgment of Conviction Sentence*.¹ We ruled that the trial court did not obtain a valid waiver of Dela Cruz's right to testify. State v. Dela Cruz, No. CAAP-24-0000511, 2025 WL 3514789 (Haw. App. Dec. 8, 2025) (SDO), vacated, No. SCWC-24-0000511, 2026 WL 2099862 (Haw. July 21, 2026) (mem. op.). The supreme court disagreed and remanded for us to address Dela Cruz's remaining contentions.

We hold: (1) the circuit court did not err by denying Dela Cruz's motion to suppress statements he made during a custodial interrogation; (2) the circuit court did not err by declining to instruct the jury on extreme mental or emotional disturbance (**EMED**) manslaughter; and (3) there was no prosecutorial misconduct during closing argument.

¹

The Honorable Shanlyn A.S. Park presided.

(1) Dela Cruz contends the trial court erroneously denied his motion to suppress because he did not waive his right to counsel.² He challenges the trial court's findings of fact, but the latest supreme court decision on this issue instructs that the standard of review is de novo, based on the totality of the circumstances. State v. Garces, --- Hawai'i ---, ---, --- P.3d ---, ---, 2026 WL 2474834, at *4, *9 (Haw. Aug. 24, 2026).

Dela Cruz was in custody when he was interviewed by Honolulu Police Department detectives Ryan **Kaio** and Scott **Sato**. The interview was recorded, videotaped, and transcribed. Dela Cruz argues he made an unequivocal request for counsel or, alternatively, an ambiguous or equivocal one, and the circuit court failed to apply State v. Hoey, 77 Hawai'i 17, 881 P.2d 504 (1994).

(1) when a suspect makes an ambiguous or equivocal request for counsel during custodial interrogation, the police must either cease all questioning or seek non-substantive clarification of the suspect's request, and (2) if, upon clarification, the defendant unambiguously and unequivocally invokes the right to counsel, all substantive questioning must cease until counsel is present. Conversely, we hold that if, upon clarification, the defendant voluntarily, knowingly, and intelligently waives the presence of counsel, substantive questioning may continue.

Id. at 36, 881 P.2d at 523.

Dela Cruz's opening brief quotes discrete portions of the interview transcript; it makes no reference to the audio or video recording. The totality of the Miranda advisement, including what can be seen and heard on the video [*shown like this*], was:

Q Okay, and then you know, since you've been here, did anyone threaten you, or tell you you 'gotta talk to us, or anything like that?

A (inaudible) [*Dela Cruz shakes head side-to-side.*]

Q No, okay. Um, since you been here you've been treated okay?

² The Honorable James S. Kawashima presided over Dela Cruz's motion to suppress.

A Yes.

Q Okay, and then you had . . . um, did you get enough sleep?

A Yes.

Q Okay, so you feel good, you all right?

A (No audible response.) *[Dela Cruz nods head up-and-down.]*

Q What about something to eat?

A Yes.

Q Something to drink.

A (No audible response.) *[Dela Cruz nods head up-and-down.]*

Q Okay, you don't want anything to drink right now or anything, you good?

A I fine, yeah.

Q Okay, okay, so, Kai, what I going do um, you know, again, this is like just procedure yeah, I have to read you your rights, because you are here um . . .

A Okay.

Q So I want you to follow along, there's couple places where you're 'gonna need to initial.

A Um-hmm.

Q Okay, um, other than that you can follow along, again, if you don't understand something, just stop me and say, what does that mean, okay?

A All right.

Q Okay, so, Kai Dela Cruz, that's spelt [sic] correctly, right?

A Yes.

Q Okay, do you know that you're in the custody of Detective Ryan Kaio, that's me, and Detective Scott Sato, at the Alapai Main Police Station, you know where you are right now?

A Yes.

Q And we introduced ourselves to you, yeah?

A (No audible response.) *[Dela Cruz nods head up-and-down.]*

Q Okay, so you agree with that, you know you're here, then you can initial there. *[Dela Cruz writes on the paper.]* Okay, I'm going to ask you question [sic] about *[Dela Cruz reads the paper as Kaio speaks]* . . . this is what you're arrested for, yeah, Murder in the

Second Degree, which occurred on November 19th, that's yesterday, 2019, at 302 Ohai Place number D, this is your address.

A Yes.

Q First I want to inform you of certain rights you have under the Constitution. Before I ask you any questions you must understand your rights. Okay, you have a right to remain silent. You don't have to say anything to me or answer any of my questions. Anything you say may be used against you at your trial. You have the right to have an attorney present while I talk to you. *[Dela Cruz nods head up-and-down.]* If you cannot afford an attorney, the court will appoint one for you, prior to any questioning. *[Dela Cruz nods head up-and-down.]* If you decide to answer my questions without an attorney being present, you still have the right to stop answering at any time. *[Dela Cruz nods head up-and-down.]* Okay, you understand what I have told you?

A Yes, (inaudible) *[and not,]* like if I got one attorney right now?

Q Then this stops, we cannot ask you any questions without.

A 'Cause I get one attorney for my last case.

Q Okay, is it a private attorney, or?

A Um, I don't want, I'm . . .

Q A public defender, or?

A Something like that, I go to punchbowl [sic], see her once in a while.

Q Okay, um, that's for another unrelated case, not related to this, right?

A Not this case.

Q Okay.

A Another felon[y] case.

Q Okay, well, if you want an attorney, you can, if you want.

A Will I have one new one with this one, or the same one?

Q I don't know if it will be the same one, --

A Okay.

Q -- the court appointed ones, it all depends, yeah.

A Yeah.

Q So, do you understand what I have . . . you understand all of this though?

- A Yes.
- Q Okay, so initial. Do you want to initial there.
Okay, do you want an attorney now meaning right here
with us? Um, if . . . while we're talking?
- A No, you guys doing your job.
- Q Okay, so for this question, do you want an attorney
now?
- A No need.
- Q Okay.
- A 'Cause I get one attorney but you guys just doing your
job, yeah.
- Q Okay, yeah, I mean up, it's up to you, completely up
to you?
- A (No audible response.) *[Dela Cruz writes on the
paper.]*
- Q Okay, would you like to tell me what happened?
- A So, so. *[Kaio and Dela Cruz laugh, Sato can be heard
laughing off-camera.]*
- Q What you mean, so, I mean, yeah, you can, you know,
like -- like this last line here^[3] says, if you 'wanna
. . . you answer my questions without an attorney want
[Dela Cruz nods head up-and-down] . . . if you feel
like, 'ah, you know, I no like already, then you can
stop at any time?
- A Yes.
- Q Okay, so you want to do that, you 'wanna?
- A Yes, whatever you ask me now.
- Q Well, it's up to you, you 'gotta make the choice, I
cannot tell you?
- A So, yes. *[Dela Cruz writes on the paper.]*
- Q Okay, Kai, sign on . . . sign you [sic] name on this
top line right here. *[Dela Cruz writes on the paper.]*
Okay, and then put your address. *[Dela Cruz writes on
the paper.]* Okay, you can use um . . . its 11-20-19,
the date, November 20th. *[Dela Cruz writes on the
paper.]*
- A Nineteen, yeah?
- Q Nineteen, yeah. *[Dela Cruz writes on the paper.]* And
the time now is 3:09 pm. *[Dela Cruz writes on the
paper.]* Okay, (inaudible). So I'm just going to sign

³ The line being referred to reads: "If you decide to answer my
questions without an attorney being present, you still have the right to stop
answering at any time."

here saying that I was here (inaudible) [when you].
[Kaio writes on the paper.]

Dela Cruz initialed and signed the HPD-81 form like this:

Do you understand what I have told you? KD Yes No
Do you want an attorney now? Yes KD No
Would you like to tell me what happened? KD Yes No

The video shows Dela Cruz was alert, attentive, and responsive to Detective Kaio. He made eye contact with the detectives, and did not appear to be confused or physically or mentally impaired. Based on the totality of circumstances, we conclude that Dela Cruz voluntarily, knowingly, and intelligently waived his right to counsel. The circuit court did not err by denying his motion to suppress his statements to Detectives Kaio and Sato.

(2) Dela Cruz contends the trial court erred by failing to instruct the jury on EMED manslaughter. Hawaii Revised Statutes (**HRS**) § 707-702 (Supp. 2019) provides:

(2) In a prosecution for murder or attempted murder in the first and second degrees it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was, at the time the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be[.]

EMED manslaughter "involves the intentional or knowing killing of another while under the influence of a reasonably induced extreme mental or emotional disturbance causing a temporary loss of normal self-control." State v. Young, 93 Hawai'i 224, 233, 999 P.2d 230, 239 (2000) (cleaned up). "[A] killer's self-control, or lack of it, *at the time of the killing* is a significant, even determining, factor in deciding whether the killer was under the influence of an extreme emotional disturbance such that his conduct would fall under HRS

§ 707-702(2)." State v. Sawyer, 88 Hawai'i 325, 333, 966 P.2d 637, 645 (1998) (emphasis added).

The person Dela Cruz killed was named Isaac **Lee**. Lee was houseless and lived in the bushes behind the apartment building where Dela Cruz and his mother lived. At trial, Dela Cruz's mother described things Lee would do that were "a problem" for Dela Cruz, that he would complain to her about.

Dela Cruz argues his "frustration with Lee built up." The evening he was killed, Lee was smoking "clear" – crystal methamphetamine – on the lānai of the apartment Dela Cruz shared with his mother. Dela Cruz smoked with Lee. The jury heard Dela Cruz's recorded statement:

- Q okay, then what happened?
- A And then I just did what I did, I confront him.
- Q Um-hmm, and then um, you must have got pissed off with him?
- A 'Nah, I wasn't like pissed off with him, I was more like, the thing was built in me, and I was weak. I was drained in my arms, and my chest, I was just drained.
- Q You couldn't help yourself?
- A Yeah, I was like weak, like.
- Q What -- what -- what did you stab him with?
- A One weapon.
- Q Okay, what 'kine weapon?
- A Um, I 'wen poke him with one knife.
- Q Okay, what . . . where your . . . where the knife came from, you had 'em on you?
- A Yeah, it was in the house.
- Q The knife was from inside . . . so when you came out, you 'wen pick 'em up?
- A Um-hmm.
- Q What 'kine knife, was it stick knife, what -- what 'kine knife?
- A Um, I not too sure.
- Q Okay.
- A I think was one tool, one hardware took [sic] knife.

Q Like, what you mean, like the box cutter type?

A No, like one Milwaukee tool knife, or something.

Q Oh, just like the blade kind?

A Yeah, Milwaukee knife.

. . . .

Q Where did you pull it out from, that Milwaukee tool thing, where you had 'em?

A In my hand.

Q Oh, so when you went outside, you had 'em in your hand?

A I had 'em in my hand.

Q Which hand, right hand?

A Yes.

Q Okay, and then um . . . the reason why I ask, I tried for picture 'em in my mind, you know, how the thing went down. Um, and then where did you poke him first?

A In his body.

Q Where, try--try point to?

A His body, --

Q Oh.

A -- I don't know, I just did what I did at the time, and I just 'wen walk out.

The medical examiner testified Lee sustained ten stab wounds and one incised wound. He explained that a stab wound is deeper than it is long; an incised wound is longer than it is deep.

While settling jury instructions, the trial court stated:

based upon the defendant's statement to law enforcement, there isn't any indication in that statement that he acted with such loss of self-control that resulted from -- from extreme mental or emotional disturbance.

. . . .

You have the defendant stating things such as, while it piles up. And the events that he's talking about is taking food, leaving dishes, and those -- walking in and out of the house. Those are things that are not occurring immediately on the lanai.

. . . .

THE COURT: And these are things that are piling up in him, even with respect to his responses. That -- that it irritates you a little bit? Yes.

With respect to the comments about him, Issac [Lee], talking with his mom, the testimony solicited was that the mom was in a room at the time of the event and was not on the lanai, and so that issue doesn't rise to the level of extreme emotional -- extreme mental or emotional disturbance.

Additionally, the issues that Mr. Dela Cruz was concerned with, again, taking of the food, walking through the house, conversations with the mom, is not things that were occurring on the lanai. And when he is asked -- and it was also very clear from his statement that he was smoking methamphetamine prior to this happening.

And he said, I wasn't -- and then in response to whether he was pissed off, which would indicate something would be rising to an extreme mental or emotional disturbance, even -- I don't know even if pissed off would necessarily rise to that level. But when asked that question, his response was: Nah, I wasn't, like, pissed off with him. I was more like the thing was built in me. I was weak. I was drained in my arms and my chest. I was just drained.

And then the answer (sic) was, you couldn't help yourself? He was like, yeah, I was -- I was like weak, like.

. . . .

So the defense's request for an EMED instruction is denied.

Dela Cruz argues: "The Circuit Court is not the gatekeeper of the reasonableness of Dela Cruz's explanation or excuse." To the contrary:

[T]he trial court determines whether or not the record reflects *any* evidence of a subjective nature that the defendant acted under a loss of self-control resulting from extreme mental or emotional disturbance. If the record does not reflect *any* such evidence, then the trial court shall properly refuse to instruct the jury on EMED manslaughter.

Sawyer, 88 Hawai'i at 333, 966 P.2d at 645.

Here, the record reflects no subjective evidence that Dela Cruz lost self-control because of extreme mental or emotional disturbance when he stabbed Lee. "The disturbance was meant to be understood in relative terms as referring to a loss

of self-control due to intense feelings." State v. Adviento, 132 Hawai'i 123, 150, 319 P.3d 1131, 1158 (2014). It is not enough for the defendant to claim he or she was experiencing emotional distress; "the mitigating EMED defense focuses on the defendant's reaction to the stress, [that is], on whether the defendant's reason was overborne." State v. Perez, 90 Hawai'i 65, 74, 976 P.2d 379, 388 (1999) (cleaned up). And the extreme mental or emotional disturbance must have been felt "at the time of the killing[.]" Sawyer, 88 Hawai'i at 333, 966 P.2d at 645.

The trial court did not err by refusing to instruct the jury on EMED manslaughter, because the record did not "reflect[] any evidence of a subjective nature that [Dela Cruz] acted under a loss of self-control resulting from extreme mental or emotional disturbance" when he stabbed Lee. Sawyer, 88 Hawai'i at 333, 966 P.2d at 645.

(3) Dela Cruz contends there was prosecutorial misconduct during closing argument when the deputy prosecuting attorney (DPA) said, concerning Dela Cruz's state of mind:

And this isn't stabbing him with an intent to wound or disfigure or even stabbing him once in the arm to scare him. No one, even a ten year old child, thinks that stabbing someone five times in the chest, in what Dr. Inouye called the cardiac box, isn't gonna kill you.

Dela Cruz did not object to the argument. We review for plain error. State v. Brown, 157 Hawai'i 354, 367, 577 P.3d 1045, 1058 (2025).

Prosecutorial misconduct is "a legal term of art that refers to any improper action committed by a prosecutor, however harmless or unintentional." Id. at 381, 577 P.3d at 1072. We must first determine whether the prosecutor's actions were improper; if so, we must then determine whether the violation of the defendant's right to a fair trial was harmless. Id.

Dela Cruz argues the DPA's statement was improper because there was "no evidence elicited during the trial concerning the medical knowledge of the average person or of a ten-year-old child." It is true that "a remark introducing new

evidence" is misconduct. Brown, 157 Hawai'i at 381, 577 P.3d at 1072. But a ten-year-old child's medical knowledge wasn't an issue in the trial.

Dr. Inouye, the emergency room trauma surgeon who treated Lee, testified about the five stab wounds in Lee's chest. The DPA's complete argument on that point was:

No one, even a ten year old child, thinks that stabbing someone five times in the chest, in what Dr. Inouye called the cardiac box, isn't gonna kill you.

Because children and even lay people, we don't have vast stores of medical knowledge. But we have reason and we have common sense. Reason and common sense which helps us filter information, which helps us understand the world and the way things work in the world. That's why it's important and that's why I talked about it during voir dire and that's why it's important for you to keep it with you and that's why it's talked about in jury --

. . . .

[DPA]: And that's why I talked about it with you and it's in the jury instructions. It's actually in the jury instructions when they tell you what you're supposed to figure out what a reasonable doubt is. You're supposed to do it through the lens of reason and common sense. And it's again in the jury instructions when it tells you how to consider the evidence. It says to consider the evidence and inferences drawn from the evidence which are justified by reason and common sense. It's your understanding of how things work.

And so, again, it's important because it tells us reason and common sense, which even children have, that there are important things in the chest here. Most notably, the heart and the lungs. And there are other things, but everyone knows that this is where the heart and the lungs are.

Now, if an attacker wanted to kill someone, that's where he'd stab. He won't go for the hand, he won't go for the foot, he won't go for the head. It's really hard to penetrate a skull. He won't go for the neck. Well, maybe he'd go for the neck, but the neck is skinnier. You have to aim better, someone could move. If you miss, you might just get a slash across the neck like Isaac had.

Center mass is where an attacker is going to aim for. Surest bet for a solid hit. Surest bet for a critical hit.

The jury had been charged to "consider only the evidence that has been presented to you in this case and inferences drawn from the evidence which are justified by reason and common sense." The DPA's appeal to reason and common sense was not improper. We find no plain error.

The July 16, 2024 *Judgment of Conviction Sentence* is affirmed.

DATED: Honolulu, Hawai'i, September 22, 2026.

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