

NO. 26171

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ANIBAL ORTIZ, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CRIMINAL NO. 03-1-0036)

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2005 DEC -5 PM 2:15

FILED

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Nakamura, JJ.)

Defendant-Appellant Anibal Ortiz (Ortiz) appeals from the September 24, 2003 Judgment of the Circuit Court of the First Circuit (trial court).<sup>1/</sup>

Ortiz was charged with: Count I, Murder in the Second Degree, Hawaii Revised Statutes (HRS) § 707-701.5 (1993 Repl.); Count II, Carrying, Using or Threatening to Use a Firearm in the Commission of a Separate Felony, HRS § 134-6(a) (1999); and Count III, Place to Keep Pistol or Revolver, HRS § 134-6(c) (1999).

In his opening statement, counsel for Ortiz told the jury that his defense was that either the witnesses for the State were mistaken or they were setting Ortiz up to take the blame for whoever caused the victim's death. In his closing statement, Ortiz's counsel told the jury that his defense was the lack of proof beyond a reasonable doubt.

After the jury found Ortiz guilty as charged, the trial

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<sup>1/</sup> The Honorable Richard K. Perkins presided.

**NOT FOR PUBLICATION**

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court sentenced Ortiz to the following three concurrent terms of imprisonment: Count 1, life, with the possibility of parole; Count 2, twenty years; and Count 3, ten years.

On appeal, Ortiz contends that the trial court reversibly erred when it (1) received into evidence, over Ortiz's objection, crime scene photographs of the victim, the unfair prejudice of which outweighed any probative value; (2) permitted, over Ortiz's objection, questioning by the State which served to bolster the credibility of a State witness absent a prior attack on her credibility; and (3) denied Ortiz's motion for mistrial after questioning by the State of a witness for the State elicited testimony that the sister of the witness wanted the witness to ask Ortiz if he was infected with HIV.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the September 24, 2003 Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 5, 2005.

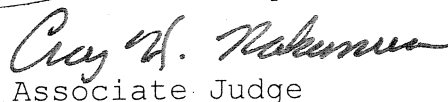
On the briefs:

Shawn A. Luiz  
for defendant-appellant.

Mark Yuen,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for plaintiff-appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge