

NOT FOR PUBLICATION

NO. 27107

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DAVID VERDEN WILLIAMS, JR., Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-2668)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Foley, and Nakamura, JJ.)

Defendant-Appellant David Verden Williams, Jr.

(Williams) appeals from the Judgment filed on February 2, 2005, in the Circuit Court of the First Circuit (circuit court).¹ A jury found Williams guilty as charged of Terroristic Threatening in the First Degree (Terroristic Threatening I), in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(d) (1993).² The

¹ The Honorable Derrick H.M. Chan presided.

² Hawaii Revised Statutes (HRS) § 707-715 (1993) defines the offense of Terroristic Threatening, in relevant part, as follows:

Terroristic threatening, defined. A person commits the offense of terroristic threatening if the person threatens, by word or conduct, to cause bodily injury to another person or serious damage to property of another or to commit a felony:

- (1) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person[.]

circuit court sentenced Williams to five years' imprisonment and imposed a mandatory minimum term of 20 months based on his status as a repeat offender.

On appeal, Williams argues that: 1) the circuit court plainly erred in failing to conduct a Tachibana colloquy or a voluntariness hearing before admitting in evidence Williams's tape recorded statement to the police; and 2) there was insufficient evidence for the jury to find Williams guilty of Terroristic Threatening I.

After a careful review of the record and the briefs submitted by the parties, we hold as follows:

1. The circuit court was not required to conduct the colloquy concerning the defendant's right to testify at trial, made compulsory by Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995), before admitting Williams's pre-trial statement in the prosecution's case in chief. The court in Tachibana stated that the "ideal time" to conduct the Tachibana colloquy was immediately before the close of the defendant's case. Id. at 237, 900 P.2d at 1304. This is precisely the time the circuit

HRS § 707-716(1)(d) (1993) provides:

Terroristic threatening in the first degree. (1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

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(d) With the use of a dangerous instrument.

court conducted the colloquy in Williams's case. The circuit court did not err in the timing of its Tachibana colloquy.

2. Williams did not request a hearing to determine the voluntariness of his tape recorded statement or object when the statement was admitted in evidence. Indeed, after the recorded statement was admitted and played for the jury, Williams's counsel stated on the record that Williams did not challenge the voluntariness of the statement:

[PROSECUTOR]: Also, for the record, my understanding was there was no challenge to the voluntariness of the statement. Put that on the record as well.

THE COURT: Is that correct?

[WILLIAMS'S COUNSEL]: Yes, Your Honor.

Williams's counsel later explained that the decision to not challenge the voluntariness of the statement was a strategic one. It allowed Williams to present his defense through the statements he made during the recorded interview, in which he denied threatening anyone, without being subject to cross-examination. Under these circumstances, we conclude that Williams waived his right to challenge the voluntariness of the recorded statement, see State v. Naeole, 62 Haw. 563, 570-71, 617 P.2d 820, 826 (1980), and that the circuit court did not err, much less plainly err, in admitting Williams's statement without holding a prior voluntariness hearing.

3. When viewed in the light most favorable to the prosecution, there was sufficient evidence to support Williams's conviction. The evidence showed that after arguing with the complaining witness (the CW), Williams on two occasions grabbed

an eight-inch knife, extended his arm toward the CW, and waved the knife back and forth with the knife blade about five to six feet from the CW. Williams's conduct made the CW fearful that the CW could be stabbed or killed. The jury's guilty verdict was supported by substantial evidence. State v. Tamura, 63 Haw. 636, 637, 633 P.2d 1115, 1117 (1981).

IT IS HEREBY ORDERED that the the Judgment filed on February 2, 2005, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 31, 2006.

On the briefs:

Shawn A. Luiz,
for Defendant-Appellant.

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Courne K A Watanabe

Acting Chief Judge

Daniel R. Foley

Associate Judge

Craig H. Nakamura

Associate Judge