

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27493

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JERRY FRANCIS LIQUIE, Defendant-Appellant

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

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(Cr. No. 04-1-336K)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Jerry Francis Lique (Lique) appeals from the judgment of the Circuit Court of the Third Circuit (the circuit court), Judge Elizabeth A. Strance presiding, entered on July 12, 2005, convicting and sentencing Lique for the offense of Assault in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-710 (1993). We affirm.

During the proceedings below, Lique stipulated that "on or about the 1[]st day of October, 2004 in Kona, County and State of Hawai'i, [he] did stab J.L., eight years of age or younger, which, under circumstances constituted a substantial step in the course of conduct which could culminate in the commission of the crime of Murder in the Second Degree." J.L. was Lique's five-month-old son. The sole defense raised by Lique at trial was that he had a physical or mental disease or defect that excluded criminal responsibility, commonly referred

to as the insanity defense. HRS § 704-400 (1993). Following a jury-waived trial, the circuit court concluded that Plaintiff-Appellee State of Hawai'i (the State) failed to prove that Liqueie committed the offense of Attempted Murder in the Second Degree. The circuit court also concluded that the State did establish, beyond a reasonable doubt, that Liqueie committed the lesser included offense of Assault in the Second Degree. As to Liqueie's insanity defense, the circuit court concluded that

[Liqueie] established by a preponderance of the evidence that at the time of the offense, he suffered from a mental disorder, disease or defect (State vs. Uyesugi, 100 Hawai'i 442, 60 P.3d 843 (2002)); however, [Liqueie] failed to establish that as the result of said mental disorder, disease or defect, he lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. Therefore, [Liqueie] shall be held criminally responsible for his actions.

On appeal, Liqueie raises three arguments: (1) the circuit court erroneously sentenced Liqueie to an enhanced sentence under HRS § 706-606.2 because the circuit court did not explicitly find the requisite aggravating circumstance--that Liqueie knew or reasonably should have known that J.L. was under the age of eight; (2) the circuit court clearly erred when it admitted and focused on irrelevant evidence pertinent to the defense of extreme mental or emotional disturbance (EMED), which Liqueie had not raised in this case; and (3) the circuit court misunderstood the insanity defense and wrongly concluded that Liqueie had failed to prove the insanity defense by a preponderance of the evidence.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the statutes and case law relevant to the arguments raised by Liqueie, we disagree with Liqueie.

As to Liqueie's first argument, we note that this was a bench trial and that evidence presented to the circuit court was overwhelming that Liqueie knew that J.L. was under the age of eight. Although the circuit court's failure to expressly find that Liqueie knew or reasonably should have known that J.L. was under the age of eight constituted error, it was an error that was harmless beyond a reasonable doubt. State v. Aplaca, 96 Hawai'i 17, 25 P.3d 792 (2001).

As to Liqueie's second argument, we disagree with Liqueie that evidence that he exhibited "competent executive behavior[,] "motor skills[,] "memory skills[,] and "self control" following Liqueie's stabbing of J.L. was irrelevant to Liqueie's insanity defense.

As to Liqueie's final argument, we note that the trial below was essentially a battle of three experts, two of whom believed that Liqueie lacked criminal responsibility when he stabbed J.L., and one who believed otherwise. Inasmuch as there is substantial support for the circuit court's conclusion that Liqueie was criminally responsible for his conduct when he stabbed

J.L., we will not, on appeal, disturb the circuit court's conclusion.

Affirmed.

DATED: Honolulu, Hawai'i, December 14, 2006.

On the briefs:

Karen T. Nakasone,
deputy public defender,
State of Hawai'i,
for defendant-appellant.

Linda L. Walton,
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