

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 25640

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
TAM VAN HUYNH, Defendant-Appellant

NORMA T. YARA
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STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 00-1-2474)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Tam Van Huynh (Huynh) appeals from the Judgment filed on January 14, 2003 in the Circuit Court of the First Circuit^{1/} (circuit court). After a jury-waived trial, the circuit court found Huynh guilty of one count of Murder in the Second Degree, in violation of Hawaii Revised Statutes (HRS) §§ 707-701.5 (1993) and 706-656 (1993 & Supp. 2006).

On appeal, Huynh argues the following:

(1) His "waiver of his right to a jury trial was not knowing, intelligent and voluntary." Huynh contends that, under the totality of the circumstances, his waiver was neither knowing nor voluntary.

(2) The circuit court "erred by holding [Huynh] penally responsible when [Huynh] demonstrated that his mental illness resulted in the substantial impairment of both [h]is cognitive capacity and his volitional capacity," and the circuit court erred in orally ruling that Huynh was not suffering from a mental disease, disorder, or defect that substantially impaired his ability to appreciate the wrongfulness of his conduct or to control his conduct at the time he took the life of Thomas Matsuda (Matsuda). Specifically, Huynh challenges the circuit

^{1/} The Honorable Sandra A. Simms presided.

court's Finding of Fact (FOF) 68 (finding the State's mental health experts more credible than the defense's mental health experts) and Conclusion of Law (COL) 57 (concluding that Huynh did have the ability to distinguish right from wrong at the time of the offense). Huynh also challenges COLs 71 (concluding that his cognitive and volitional capacity was not substantially impaired at the time of the incident) and 73c (concluding that Huynh had substantial capacity to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of the law at the time of the incident and therefore did not "meet the legal requirements for the insanity defense").^{2/}

^{2/} The challenged Findings of Fact and Conclusions of Law are as follows:

57. Notwithstanding [Huynh's] claim to the contrary, this [prior incidents of threatening co-workers] suggests that at the time [Huynh] stabbed Matsuda, [Huynh] did in fact have the ability to appreciate right from wrong and to control his behavior.
.....
67. In evaluating the testimony and opinions of each of the experts who testified, the Court considered the following:
 - a. The expert's qualifications, i.e., education, knowledge, experience and training;
 - b. The information available to the expert, i.e. police reports, hotel security reports, Oahu Community Correctional Center records, Castle Hospital records, etc. . . . [;]
 - c. Any other information gathered by the expert, i.e., interviews with [Huynh's] family, co-workers, witnesses to the two prior threatening incidents, and witnesses to the instant stabbing;
 - d. The expert's opinion;
 - e. The basis for the expert's opinion; and
 - f. The other evidence introduced at trial, i.e., witnesses, exhibits and stipulations.
68. Based upon the totality of evidence, this Court finds the testimony of the State's experts -- D. Douglas Smith, M.D., Terrance Wade, Ph.D, and Leonard Jacobs, M.D. -- more compelling and persuasive than the testimony of the defense experts -- Olaf Gitter, Ph.D and Thomas Merrill, M.D., on the issue of legal insanity.
.....

(continued...)

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Huynh's points of error as follows:

(1) Viewed in light of the totality of the circumstances, the record indicates that Huynh's waiver of his right to jury trial was knowing, voluntary, and intelligent, and Huynh did not carry his burden of demonstrating by a preponderance of the evidence that his waiver was involuntary. State v. Friedman, 93 Hawai'i 63, 69, 996 P.2d 268, 274 (2000).

(a) Huynh's contentions, that his mental illness prevented a knowing, voluntary, and intelligent waiver and that he was attempting to minimize his mental illness at the time of his waiver, fail. Huynh stated at the time he made his waiver that his mind was clear. The record does not support Huynh's assertion that he was merely attempting to convey that he was not hearing voices at the time he made his waiver. The inference

(...continued)

70. Based upon the expert testimony, this Court finds and concludes that [Huynh] appears to have been suffering from a mental disease, i.e., schizophrenia, at the time of the killing.

71. This Court does not find or conclude, however, that as a result of his mental disease, either [Huynh's] cognitive or volitional capacity was substantially impaired.

72. As such, this Court finds and concludes that [Huynh] has failed to meet his burden of affirmatively proving the insanity defense.

73. After considering all the evidence and the applicable law, this Court finds and concludes as follows:

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c. Based upon the credible and persuasive testimony of the State's mental health experts, [Huynh] retained substantial capacity to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of the law; as such, [Huynh] does not meet the legal requirements for the insanity defense[.]

Huynh asks this court to draw on appeal is contrary to the express contents of the record and one better suited to the circuit court judge, who had the opportunity to observe Huynh's demeanor and behavior at the time Huynh made his waiver.

(b) Huynh was not entitled, by virtue of any language barrier, to a supplemental waiver colloquy of the type discussed in United States v. Duarte-Higareda, 113 F.3d 1000, 1002 (9th Cir. 1997).^{3/} The Hawai'i Supreme Court, in Friedman, expressly declined to adopt any bright-line rule that the supplemental colloquy set forth in Duarte-Higareda be used in "every case" in Hawai'i courts. Friedman, 93 Hawai'i at 69, 996 P.2d at 274. Rather than any rigid set of factual determinations, this court considers the totality of the circumstances when analyzing the voluntariness of a defendant's waiver of his right to a jury trial. Id. Here, while the record shows that a language barrier existed, the record also plainly demonstrates that Huynh had the assistance of an interpreter. Huynh's counsel, in response to the circuit court's questioning, indicated that after counsel explained the waiver form to the interpreter, the interpreter reviewed the form with Huynh prior to Huynh's signing the form.

(c) Huynh's assertion that he was not sufficiently informed of the difference between a trial by jury and a bench trial fails because the circuit court made specific inquiry of him as to the distinctions between a jury trial and a bench trial, and Huynh, with full assistance of an interpreter,

^{3/} In United States v. Duarte-Higareda, 113 F.3d 1000 (9th Cir. 1997), the defendant, who was not fluent in English, had signed an English-language waiver form, but the record was silent as to whether the form had been translated for him. Id. at 1002. On appeal, the United States Court of Appeals for the Ninth Circuit vacated, finding that the language barrier constituted a "special disadvantage or disability" bearing upon the defendant's ability to understand the waiver of a jury trial and thus requiring a more extensive colloquy between the district court and the defendant to ensure voluntariness. Id. at 1003. The Ninth Circuit concluded that the language barrier in that case was a salient fact giving notice to the district court that the defendant's waiver was less than voluntary. Id.

answered clearly and unequivocally that he understood the differences.

(d) Huynh's assertion that because this was his first encounter with the American legal system he lacked sufficient understanding of American court proceedings also fails. Huynh concedes that all five experts who examined him concluded that he was fit to proceed to trial, but argues that all noted his inexperience with the American legal system and noted that he would require considerable assistance in proceeding through the case. He cites no authority standing for the proposition that inexperience with courtroom procedures should render his waiver invalid. Huynh does not claim that he did not receive sufficient legal counsel and interpreter assistance at all relevant proceedings. Huynh cites to no portion of the trial record indicating that he lacked the understanding of any particular proceeding or identifying any specific undue prejudice accruing from his lack of experience in American courts.

(e) The record on appeal does not support Huynh's assertion that given his history of mental illness, regimen of antipsychotic medication, and limited understanding of English, he could not have sufficiently understood his right to a jury trial. Rather, the transcript of the February 14, 2002 hearing indicates that on more than one occasion the circuit court specifically asked Huynh if he had discussed his right to a jury trial with counsel prior to his executing the waiver and Huynh answered that he had.

(2) The circuit court did not err by concluding that Huynh failed to meet his burden of demonstrating a lack of substantial capacity to appreciate the wrongful nature of his conduct or conform it to the law, and the circuit court did not clearly err by finding the State's mental health experts more credible than those testifying for the defense. HRS § 704-400(1)

(1993); State v. Uyesugi, 100 Hawai'i 442, 456, 60 P.3d 843, 857 (2002).

The test for the insanity defense "encourages maximum informational input from expert witnesses," but reserves the ultimate decision for the fact finder. State v. Nuetzel, 61 Haw. 531, 542, 606 P.2d 920, 927 (1980). The circuit court accepted in its FOF 70 that Huynh was suffering from a mental illness at the time of the incident. However, just because a defendant is suffering from a mental illness does not mean the defendant is suffering a defect for which he should avoid criminal liability. State v. Freitas, 62 Haw. 17, 19, 608 P.2d 408, 410 (1980). The record on appeal demonstrates that the States's testifying experts all engaged in substantial and careful evaluations of Huynh in making their determinations. Therefore, the circuit court did not err in FOF 68 when it credited the testimonies of the State's experts over the experts who testified for the defense; such is the factfinder's role. "The findings of an expert are always entitled to serious consideration by the trier of fact, but the weight the factfinder gives to expert evidence is dependent upon its own assessment of the facts upon which the expert's opinion is predicated, upon the validity of the expert's assumptions, upon the reliability of the diagnostic and analytical processes by which the expert arrived at his determinations, and upon all other facts and circumstances bearing on the issue." Freitas, 62 Haw. at 23, 608 P.2d at 412.

For the same reasons, the circuit court did not err in its COL 57 when it concluded that Huynh did have the ability to distinguish right and wrong at the time of the offense, in COL 71 when it concluded that Huynh's cognitive and volitional capacity was not impaired at the time of the incident, or in COL 73c when it concluded that Huynh had substantial capacity to appreciate

the wrongfulness of his conduct and to conform his conduct to the requirements of the law at the time of the incident.

Therefore,

The Judgment filed on January 14, 2003 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 26, 2007.

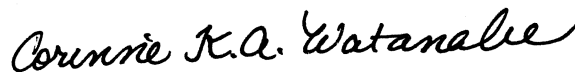
On the briefs:

Cynthia A. Kagiwada
for Defendant-Appellant.

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



Chief Judge



Associate Judge



Associate Judge