

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27871

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ERIC GENE PIXLEY, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-1736)

KHAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Defendant-Appellant Eric Gene Pixley (Pixley) appeals the Judgment of Conviction and Sentence filed on March 29, 2006 in the Circuit Court of the First Circuit (circuit court).^{1/}

On September 2, 2004, the State charged Pixley with Ownership or Possession Prohibited of Any Firearm or Ammunition by a Person Convicted of Certain Crimes, in violation of Hawaii Revised Statutes (HRS) § 134-7(b) & (h) (Supp. 2005) (Count I), and Unauthorized Control of Propelled Vehicle, in violation of HRS § 708-836 (Supp. 2006) (Count II). A jury returned a guilty verdict on both counts on October 20, 2005. On March 29, 2006, the circuit court sentenced Pixley and filed its judgment. Pixley filed a Notice of Appeal on April 10, 2006.

On appeal, Pixley argues that (1) the evidence was insufficient to establish that he committed the two offenses charged and (2) the State of Hawai'i (the State) committed prosecutorial misconduct.

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 as raised by the parties, we conclude:

(1) There was substantial evidence adduced at trial to support the jury verdict that Pixley was guilty of the charged

^{1/} The Honorable Michael D. Wilson presided.

offenses of Unauthorized Control of Propelled Vehicle and Ownership or Possession Prohibited of Any Firearm or Ammunition by a Person Convicted of Certain Crimes. HRS § 708-836; HRS § 134-7(b) & (h); HRS § 701-114 (1993); HRS § 702-205 (1993); State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998); State v. Naeole, 62 Haw. 563, 565, 617 P.2d 820, 823 (1980); State v. Mitchell, 88 Hawai'i 216, 226, 965 P.2d 149, 159 (App. 1998); State v. Valdivia, 95 Hawai'i 465, 473, 24 P.3d 661, 669 (2001); State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996).

(2) The State's closing and rebuttal arguments disclosed that, viewed in context, the State was legitimately commenting on the evidence and on reasonable inferences therefrom and therefore did not constitute prosecutorial misconduct. Hawai'i Rules of Penal Procedure Rule 52(a); State v. Carvalho, 106 Hawai'i 13, 16 n.7, 100 P.3d 607, 610 n.7 (App. 2004); State v. Sanchez, 82 Hawai'i 517, 528, 923 P.2d 934, 945 (App. 1996); State v. Pacheco, 96 Hawai'i 83, 95, 26 P.3d 572, 584 (2001); State v. Rogan, 91 Hawai'i 405, 412-13, 984 P.2d 1231, 1238-39 (1999).

IT IS HEREBY ORDERED that the Judgment of Conviction and Sentence filed on March 29, 2006 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 30, 2007.

On the briefs:

Linda C.R. Jameson
for Defendant-Appellant.

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Presiding Judge


Associate Judge


Associate Judge