NO. 28046

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DONNY HIRAMOTO, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Cr. No. 05-1-0085)

SUMMARY DISPOSITION ORDER
(By: Watanabe, Presiding J., Foley, and Nakamura, JJ.)

Defendant-Appellant Donny Hiramoto (Hiramoto) appeals from the judgment entered by the Circuit Court of the First Circuit[1] (the circuit court) on July 17, 2006, convicting and sentencing him for Murder in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 707-701.5 (1993);[2] Carrying, Using or Threatening to Use a Firearm in the Commission of a Separate Felony, in violation of HRS § 134-6(a) (Supp. 2005);[3]

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[1] The Honorable Steven S. Alm presided.

[2] Hawaii Revised Statutes (HRS) § 707-701.5 (1993) states:

> **Murder in the second degree.** (1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person.
>
> (2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656.

[3] HRS § 134-6(a) (Supp. 2005) stated, as it did when Defendant-Appellant Donny Hiramoto (Hiramoto) allegedly violated the statute, as follows:

> **Carrying or use of firearm in the commission of a separate felony; place to keep firearms; loaded firearms; penalty.** (a) It shall be unlawful for a person to knowingly carry on the person or have within the person's immediate control or intentionally use or threaten to use a firearm while engaged in the commission of a separate felony, whether the firearm was loaded or not, and whether operable or not; provided that a person shall not be

(continued...)

and Place to Keep Firearm, in violation of HRS § 134-6(c) (Supp. 2005).[4]

Hiramoto raises four points of error. He contends that: (1) "[t]here was no substantial evidence to support [his] convictions" because no direct evidence linked him to the offenses for which he was convicted and the circumstantial evidence offered was "not credible evidence of sufficient quality and probative value to enable a person of reasonable caution to

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[3](...continued)
prosecuted under this subsection where the separate felony is:

(1) A felony offense otherwise defined by this chapter;
(2) The felony offense of reckless endangering in the first degree under section 707-713;
(3) The felony offense of terroristic threatening in the first degree under section [707-716(1)(a)], [707-716(1)(b)], and [707-716(1)(d)]; or
(4) The felony offenses of criminal property damage in the first degree under section 708-820 and criminal property damage in the second degree under section 708-821 and the firearm is the instrument or means by which the property damage is caused.

(Brackets in original.)

[4] HRS § 134-6(c) (Supp. 2005) stated, as it did when Hiramoto allegedly violated the statute, as follows:

> **Carrying or use of firearm in the commission of a separate felony; place to keep firearms; loaded firearms; penalty. . . .**
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> . . . .
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> (c) Except as provided in sections 134-5 and 134-9, all firearms and ammunition shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms or ammunition or both in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following: a place of repair; a target range; a licensed dealer's place of business; an organized, scheduled firearms show or exhibit; a place of formal hunter or firearm use training or instruction; or a police station. "Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

support a conclusion[;]" (2) the circuit court "was wrong in taking judicial notice of the date and time of the [University of Hawai'i at Mānoa (UH)] basketball game that was introduced to bolster the testimony of the State's witness[;]" (3) the circuit court "abused its discretion in failing to hold a [Hawaii Rules of Evidence] Rule 104 hearing to determine the preliminary admissibility of the evidence relating to Detective [Sheryl] Sunia's [(Detective Sunia)] credibility and/or in excluding that evidence from the trial[;]" and (4) the circuit court "abused its discretion in admitting the minimally probative and highly prejudicial morgue photographs."

Upon careful review of the record, the briefs submitted by the parties, and the statutory and case law relevant to the issues on appeal, and having duly considered the arguments and issues raised by the parties, we disagree with Hiramoto and resolve his arguments as follows:

(1) In reviewing insufficiency-of-the-evidence claims on appeal, we are required to consider the evidence adduced in the trial court in the strongest light for the prosecution. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998). The test "is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact." Id. (quoting State v. Quitog, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997)). "'Substantial evidence' as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Id.

Based on our review of the record, we conclude that, viewed in the light most favorable to the prosecution, the credible evidence adduced at trial was clearly sufficient to support a prima facie case against Hiramoto as to every material

element of the offenses he was charged with and to enable a person of reasonable caution to fairly conclude that Hiramoto was guilty beyond a reasonable doubt. State v. Grace, 107 Hawai'i 133, 139, 111 P.3d 28, 34 (App. 2005).

(2) The circuit court did not abuse its discretion by taking judicial notice of the time, date, and opponent of a UH men's basketball game. The fact that the UH basketball team played Oral Roberts University at 7:30 p.m. on December 22, 2004 is an adjudicative fact.[5] The time, date, and participants in a UH basketball game are facts generally known within the territorial jurisdiction of the circuit court and are also capable of accurate and ready determination. Additionally, newspapers[6] and schedules that were used by Plaintiff-Appellee State of Hawai'i (the State) to support these facts are sources whose accuracy cannot reasonably be questioned because they are used to determine the dates and times of sporting events. Moreover, the defense failed to present any evidence to the circuit court challenging the accuracy of the newspaper article

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[5] Hawaii Rules of Evidence (HRE) Rule 201 (1993), in pertinent part, states:

> **Judicial notice of adjudicative facts.** (a) Scope of rule. This rule governs only judicial notice of adjudicative facts.
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> (b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

[6] In In re Application of Pioneer Mill Co., 53 Haw. 496, 497 P.2d 549 (1972), the Hawai'i Supreme Court took judicial notice of the fact that a judge made an announcement concerning his candidacy for public office on a specific date based upon photocopies of newspaper articles noting these facts. Id. at 497 n.1, 497 P.2d at 551 n.1. The supreme court based its decision to take judicial notice on Rule 802(c) of the American Law Institute's Model Code of Evidence, which "sanctions judicial notice of 'propositions of generalized knowledge which are capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy.'" Id.

or schedule offered by the State.[7] Finally, the circuit court was not required to have the State authenticate its supporting evidence because the newspaper article is self-authenticating.[8]

(3) Contrary to Hiramoto's contention, the circuit court did hold a hearing regarding the admissibility of allegations that Detective Sunia had testified falsely in another murder case and instructed her partner to back date certain evidence and lie about it. Specifically, on April 13, 2006, the circuit court heard arguments on the State's Motion in Limine Requiring an Offer of Proof Before Admitting Certain Evidence at Trial concerning Detective Sunia's credibility. After hearing offers of proof from both sides, the circuit court ruled as follows:

> Okay. The Court views this kind of thing as a 104 preliminary kind of question. It appears that external to this case, they are investigating [Detective Sunia] for this. Whether the [Department of the Attorney General] charged or not, they're [sic] all sorts of reasons as you both know why cases get charged or not charged. But in any event there was no adjudication there. As far as the internal affairs [(IA)] investigation, that continues so there's no adjudication there.
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> So right now in front of me I have a he-said she-said situation since a request by this by -- to use this evidence, I guess, by the defense, I'm not convinced that she lied. You know, whether or not she did, we don't know but I have to make that decision now. I have to have that level of certainty on a preliminary question, which is preponderance of the evidence, that she lied to allow that into evidence and go in front of the jury. I don't have that right now, so I don't think that evidence is

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[7] In In re Application of Pioneer Mill Co., the Hawai'i Supreme Court "subscribe[d] to the position of IX Wigmore, *Evidence* § 2567 at 535-536 (1940), and *United States v. Aluminum Co. of America*, 148 F.2d 416, 446 (2d Cir. 1945) that the effect of judicial notice is that a fact is taken to be true unless rebutted." 53 Haw. at 497 n.1, 497 P.2d at 551 n.1.

[8] HRE Rule 902 (1993), in pertinent part, states:

> **Self-authentication.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
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> . . . .
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> (6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

> appropriate to come into the trial. And so you would be precluded from questioning her about it, [defense counsel], unless between now and when she gets on the stand we get a report from IA or something else that causes me to change my mind.
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> . . . .
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> . . . [F]rom the offers of proof that I've gotten, Detective Tamashiro would testify one way, Detective Sunia would testify the other, you'd essentially be wanting me to have a mini trial and assess their credibility, which I think is the only way I could do that. And given the fact that there is an investigation already ongoing, this would then become part of that or you guys would be wanting to delay the trial to get that so that could be a part of this, you know, prior inconsistent statements, all of that kind of stuff, I don't think that's appropriate at this stage. Which is why when I asked if you guys had anything further to offer on this issue, that's what I was referring to as far as evidence on this.

In light of the offers of proof, the circuit court did not abuse its discretion in precluding evidence of Detective Sunia's alleged misconduct.

(4) Based on State v. Edwards, 81 Hawai'i 293, 916 P.2d 703 (1996), the probative value of the three morgue photographs, Exhibits 58, 59, and 60, was not substantially outweighed by the danger of unfair prejudice. The photographs were probative in establishing the *corpus delicti* of the victim's alleged murder and in corroborating the testimonies of Marcus Chang, the evidence specialist who took the photographs, and Dr. Gayle Suzuki, the medical examiner. Exhibits 58 and 59 depicted different angles of the extent and location of the victim's wounds. Exhibit 60 was the only picture showing the presence of soot around the wound, which "is consistent with a near contact range gunshot wound." Exhibit 60 was therefore highly probative because Hiramoto was charged with two counts of firearm-related offenses, and there was no other direct evidence that a gun was used in the commission of the crime. Since the photographs each depicted different angles of the victim's injury, they were not needlessly cumulative. Moreover, "the fact that a photograph may be considered gruesome does not necessarily

render the photograph inadmissible" because "[t]he inescapable reality is that gruesome crimes result in gruesome pictures." State v. Edwards, 81 Hawai'i at 299, 916 P.2d at 709 (citations, internal quotation marks, and brackets omitted). Consequently, the circuit court did not abuse its discretion by admitting the three morgue photographs.

Accordingly, we affirm the judgment entered by the circuit court on July 17, 2006.

DATED: Honolulu, Hawai'i, September 5, 2007.

On the briefs:

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