NO. 28201

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
KEALIIOKALANI MEHEULA, aka KEALII MEHEULA,
Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 05-1-1067)

SUMMARY DISPOSITION ORDER
(By: Recktenwald, C.J., Nakamura and Fujise, JJ.)

Defendant-Appellant Kealiiokalani Meheula, also known as Kealii Meheula (Meheula), appeals from the Judgment of Conviction and Sentence filed on September 6, 2006 in the Circuit Court of the First Circuit.[1] After a jury trial, Meheula was convicted of murder in the second degree in violation of Hawaii Revised Statutes (HRS) § 707-701.5 and 706-656 (1993).[2] The

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[1] The Honorable Karl K. Sakamoto presided.

[2] Hawaii Revised Statutes (HRS) § 707-701.5 (1993) provides in pertinent part:

> **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 sentences to imprisonment as provided in section 706-656.

HRS § 706-656 (Supp. 2006) provides in pertinent part:

> **Terms of imprisonment for first and second degree murder and attempted first and second degree murder.**
> . . . .
> (2) Except as provided in section 706-657, pertaining to enhanced sentence for second degree murder,

circuit court sentenced Meheula to incarceration for life with the possibility of parole.

On appeal, Meheula raises the following points of error:

(1) "The trial court erred in instructing the jury on 'involuntary [sic] intoxication' in the absence of any evidence supporting such an instruction. As a result of the instruction, the State was allowed to improperly argue to the jury that [Meheula] had been on ice at the time of the stabbing."

(2) "The trial court erred in denying the defense's motion for a new trial based on the identical reasons set forth above . . . "

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

(1) The circuit court did not err in allowing the State to argue in closing argument that Meheula was under the influence of "ice" at the time of the incident, and did not err in instructing the jury with regard to voluntary intoxication. Although Meheula denied that he used ice on the day of the incident, there was sufficient circumstantial evidence to support

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persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole.

an inference that Meheula had used ice that day. The Hawai'i Supreme Court has held that during closing arguments,

> [A] prosecutor . . . is permitted to draw reasonable inferences from the evidence and wide latitude is allowed in discussing the evidence. It is also within the bounds of legitimate argument for prosecutors to state, discuss, and comment on the evidence as well as to draw all reasonable inferences from the evidence.

State v. Clark, 83 Hawai'i 289, 304, 926 P.2d 194, 209 (1996) (citations omitted) (not plain error for the prosecutor to argue that defendant's testimony was "a cockamamie story," when defendant testified that he had not used cocaine prior to stabbing his wife).

Meheula also suggests that the State should have been required to introduce expert testimony about the effects of ice use. However, this court has held that expert testimony is not required before a party can cross-examine a witness about the effects of methamphetamine on the witness's perception and recollection. State v. Sabog, 108 Hawai'i 102, 109, 117 P.3d 834, 841 (App. 2005). Similarly here, we conclude that the circuit court did not err in allowing the State to argue that Meheula was under the influence of ice at the time of the incident, without introducing expert testimony about the effects of ice use. The State's argument on this point was very limited, and appeared to suggest that Meheula's ice use may have caused him to act on the "spur of the moment" during an argument with

the victim.[3] It did not suggest that Meheula was untrustworthy or unreliable simply because he was an ice user, which would have been objectionable. Id. at 109, 117 P.3d at 841; State v. Sugimoto, 62 Haw. 259, 263, 614 P.2d 386, 390 (1980).

Nor did the circuit court err in instructing the jury on intoxication over Meheula's objection, since there was sufficient evidence of Meheula's intoxication to support the giving of that instruction. Madden v. State, 261 N.E.2d 847, 850 (Ind. 1970), overruled on other grounds by Snipes v. State, 307 N.E.2d 470 (Ind. 1974) (not error to give self-intoxication instruction over the objection of the defendant; "[s]ince there was evidence presented to the trial court concerning appellant's intoxication at the time of the crime . . . , and since the . . . instruction contained a correct statement of the law, we hold that the giving thereof was not error"); Taylor v. State, 885 S.W.2d 154, 158 (Tex. Crim. App. 1994) ("We do not believe that a

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[3] In relevant part, the Deputy Prosecuting Attorney (DPA) argued:

> [DPA]: Nobody including the state is saying this is a premeditated crime. When I suggest to you it's a blitz attack, part of what I mean by that is that it was probably a quick spur of the moment [sic]. Both of them were on ice.
>
> [Defense counsel]: Objection, Your Honor.
>
> THE COURT: Overruled.
>
> [DPA]: Now, defendant denies it, but use your common sense. Both of them were on ice.
>
> I cannot stand here and tell you I know exactly what happened in that truck, but there was probably some kind of an argument.

defendant needs to rely upon intoxication as a defense in order to implicate [the statute on self-intoxication]. Rather, if there is evidence from any source that might lead a jury to conclude that the defendant's intoxication somehow excused his actions, an instruction is appropriate.").

In State v. Okuda, 71 Haw. 434, 795 P.2d 1 (1990), the Supreme Court of Hawai'i stated:

> [I]n determining whether there is evidence that will warrant an instruction, the court does not pass on the weight and sufficiency of the evidence. It is not error to submit an instruction covering a theory advanced by a party if there is any evidence on which to base it, although it might be slight and inconclusive, or opposed to the preponderance of the evidence.

Id. at 452, 795 P.2d at 11 (citing 75 Am.Jur.2d Trial § 652 at 610 (1974) (emphasis added)); see State v. Tucker, 10 Haw. App. 73, 80, 861 P.2d 37, 43 (1993) (evidence which would support the inference that the defendant knowingly deferred to her husband's decision not to seek medical care for their infant child was sufficient to support an accomplice liability instruction).

Contrary to Meheula's contentions, Okuda does not require "definitive" evidence to support a jury instruction. Rather, circumstantial evidence from which a jury could infer facts supporting a party's theory is sufficient to support a jury instruction on that theory. See State v. Keaweehu, 110 Hawai'i 129, 134, 129 P.3d 1157, 1162 (App. 2006) (circumstantial evidence from which a jury could have inferred that the defendant acted as an accomplice to the unlawful possession of

methamphetamine was sufficient to support an accomplice liability instruction).

We do not see how the instruction, which accurately summarized the relevant law on intoxication, HRS § 702-230 (1993), amounted to a comment on the evidence by the circuit court. Nor do we agree with Meheula's contention that the instruction was "extremely negative character evidence." The instruction was neutral and did not suggest that the jury should draw any inference, negative or otherwise, regarding Meheula's character.

Finally, we disagree with Meheula's contention that the jury instruction "allowed the State to negate [Meheula's] self-defense without actually having disproved the self-defense beyond a reasonable doubt[.]" When read and considered as a whole, State v. Gonsalves, 108 Hawai'i 289, 292-93, 119 P.3d 597, 600-01 (2005), the jury instructions made clear that the State had the burden of proving beyond a reasonable doubt that Meheula did not act in self-defense.

(2) For the same reasons, we conclude that the circuit court did not abuse its discretion in denying Meheula's motion for a new trial. State v. Yamada, 108 Hawai'i 474, 478, 122 P.3d 254, 258 (2005) ("the granting or denial of a motion for new trial is within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion").

Therefore,

IT IS HEREBY ORDERED that the Judgment of Conviction and Sentence filed on September 6, 2006 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 14, 2007.

On the briefs:

Linda C.R. Jameson
for Defendant-Appellant.

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Chief Judge

Associate Judge

Associate Judge