NO. 22730

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

NORMAN MONTIRA, Defendant-Appellant
(CR. NO. 97-2451)

and

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

NORMAN MONTIRA, Defendant-Appellant
(CR. NO. 97-1095)

APPEAL FROM THE FIRST CIRCUIT COURT

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama,
Ramil and Acoba, JJ.)

Defendant-Appellant Norman Montira (Defendant) appeals from the July 12, 1999 judgment of guilty conviction and sentence of the first circuit court (the court). Defendant was convicted of Attempted Murder in the First Degree of three persons, namely, David Eli, III, Timothy Calderon, and Ronald Botelho, see Hawai'i Revised Statues (HRS) §§ 705-500 (1993), 706-656 (Supp. 1999),

and 707-701 (1993); Place to Keep Pistol or Revolver, HRS §§ 134-6 (Supp. 1999) and 134-9 (Supp. 1999); and Terroristic Threatening in the First Degree, HRS §§ 706-660 (1993) and 707-716 (1993).

On appeal, Defendant asserts two points of error. First, he argues that there was a lack of substantial evidence to support his conviction of Attempted Murder in the First Degree. Second, he contends that he was deprived of a fair trial because the court denied his motions for mistrial following references to Defendant's apparent past drug use by two witnesses.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we hold as follows:

With respect to Defendant's first point, we conclude that there was substantial evidence in the record to support Defendant's conviction for the offense of Attempted Murder in the First Degree. See State v. Hanapi, 89 Hawai'i 177, 182, 970 P.2d 485, 490 (1998) (stating that appellate review of challenges to the sufficiency of evidence supporting a conviction is governed by "'whether there was substantial evidence to support the conclusion of the trier of fact'" and "'[s]ubstantial evidence . . . is credible evidence which is of sufficient quality and probative value to enable a [person] of reasonable caution to

support a conclusion'") (quoting State v. Pulse, 83 Hawai'i 229, 244, 925 P.2d 797, 812 (1996)). The jury could infer from the circumstances that, in shooting David Eli, III, Timothy Calderon, and Ronald Botelho, Defendant intended to kill persons who might be able to prevent him from attaining his singular expressed objective of locating Glenn Botelho on the day in question.

With respect to Defendant's second point of error, we conclude that the court did not abuse its discretion in denying Defendant's motions for mistrial because there was no "occurrence of such character and magnitude" as would deprive Defendant of a fair trial. See Kawamata Farms v. United Agri Prods., 86 Hawai'i 214, 246, 941 P.2d 1055, 1087 (1999). The court, in each relevant instance, struck the offending testimony and instructed the jury to ignore the references to drug use by Defendant. We presume the jury followed the instructions. See Roxas v. Marcos, 89 Hawai'i 91, 147, 969 P.2d 1209, 1265 (1998) ("As a rule, [a reviewing court] presume[s] that the jury followed the circuit court's instructions."). Additionally, any error by the court was harmless in light of unrebutted eyewitness testimony and Defendant's own confession to the effect that Defendant shot three persons. See State v. Apo, 82 Hawai'i 394, 404-05, 992 P.2d 1007, 1017-18 (App. 1996) (affirming the judgment of conviction because the admission of the subject evidence constituted harmless error); State v. Suka, 79 Hawai'i 293, 295,

901 P.2d 1272, 1274 (App. 1995) (affirming the judgment of conviction because the prosecutor's improper statement in closing argument was harmless beyond a reasonable doubt under Hawai'i Rules of Penal Procedure Rule 52(a)); cf. State v. Pulse, 83 Hawai'i 229, 248, 925 P.2d 797, 816 (1996) (citations omitted) (stating that when "error is not harmless beyond a reasonable doubt, . . . the judgment of conviction on which it may have been based must be set aside").

Accordingly, we affirm the court's July 12, 1999 judgment of guilty conviction and sentence.[1]

DATED: Honolulu, Hawai'i, July 31, 2000.

On the briefs:

Keith S. Shigetomi for
defendant-appellant.

Caroline M. Mee, Deputy
Prosecuting Attorney,
City and County of
Honolulu, for plaintiff-
appellee.

[1] While not raised by the parties, we express no opinion on the correctness of the court's instruction which advised the jury that, if it found Defendant guilty of attempted murder of two or more persons, it need not consider a charge of murder in the second degree as to one of the three victims who was in fact murdered as a result of the attempt. Error, if any, was harmless, in light of the fact that, following the court's instructions, the jury must have necessarily found Defendant guilty of attempting to murder the other two victims also, the gravamen of the offense of attempted murder in the first degree being the singular intent to kill two or more persons. See State v. Ganal, 81 Hawai'i 358, 380, 917 P.2d 370, 392 (1996).