

NO. 22486

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

GREGORIO MARBOU, Defendant-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(FC-CR. NO. 98-2955)

SUMMARY DISPOSITION ORDER

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

Upon carefully reviewing 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 hold that the circuit court abused its discretion in admitting Humie Iekar's (Iekar) testimony regarding Gregorio Marbou's (Marbou) alleged drug use for the purpose of proving Marbou's state of mind. See Hawai'i Rules of Evidence (HRE) Rule 404(b); Hawai'i Revised Statutes (HRS) § 702-230 (1993). In addition, the circuit court erred in failing to (1) determine if the evidence at issue was relevant and probative of another fact that is of consequence to the determination of the action, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, modus operandi, or absence of mistake or

accident, see HRE Rule 404(b); and (2) balance the probative value of the evidence against its prejudicial impact, see HRE Rule 403.

Because there was a reasonable possibility that the evidence contributed to Marbou's conviction, it was not harmless beyond a reasonable doubt, and the judgment of conviction on which it may have been based must be set aside. See State v. Vanstory, 91 Hawai'i 33, 43, 979 P.2d 1059, 1069 (1999).

Therefore,

IT IS HEREBY ORDERED that the circuit court's April 19, 1999 judgment of conviction is vacated, and this case is remanded to the circuit court for a new trial.

DATED: Honolulu, Hawai'i, September 25, 2000.

On the briefs:

Arthur E. Ross, for  
defendant-appellant

Donn Fudo, Deputy  
Prosecuting Attorney,  
for plaintiff-appellee