

NO. 24846

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JOSEPH R. VICTORINO, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 01-1-0387)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Joseph R. Victorino (Defendant) appeals from the judgment entered on December 19, 2001 by the circuit court of the first circuit¹ (the court), adjudging him guilty of manslaughter, Hawai'i Revised Statutes (HRS) § 707-702(2) (1985) (Count I), and carrying a firearm on a person without permit or license, HRS § 134-9 (1985) (Count II). On appeal, Appellant challenges only his conviction as to Count I, arguing that there was not substantial evidence to support his conviction because his use of deadly force was justifiable.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, duly considering and analyzing the law relevant to the arguments and issues raised by the parties, and

¹ The Honorable Michael A. Town presided over this matter.

having heard oral argument, we hold that: (1) there was substantial evidence to support Defendant's conviction for the lesser included offense of manslaughter, HRS § 707-702(2); (2) substantial evidence is "credible evidence which is of sufficient quality and probative value to enable a [person] of reasonable caution to reach a conclusion," State v. Matias, 74 Haw. 197, 207, 840 P.2d 374, 379 (1992) (internal quotation marks, citations, and ellipsis points omitted); (3) "[s]elf defense is not an affirmative defense, and [Plaintiff-Appellee State of Hawai'i (the prosecution)] has the burden of disproving it once evidence of justification has been adduced[,]" State v. Culkin, 97 Hawai'i 206, 215, 35 P.3d 233, 242 (2001) (quoting HRS § 702-205(b) (1993)); (4) the burden is on the prosecution to do so beyond a reasonable doubt, see State v. Pavao, 81 Hawai'i 142, 913 P.2d 553 (App. 1996); (5) "the prosecution does this when the trier of fact believes its case and disbelieves the defense," id. at 146, 913 P.2d at 557 (citing Commentary on HRS § 701-115 (1993)); (6) by its verdict the jury disbelieved Defendant's defense; (7) the record contained evidence to support the jury's rejection of Defendant's self-defense defense, to wit, evidence that (a) Defendant shot Michael Burns Maher, Sr. three times during an altercation between the two, causing his death; (b) Defendant was told that Maher had accused Defendant of stealing Maher's tools and used profanity in doing so; (c) after about ten seconds Defendant drove to the bar where Maher was located; (d) Defendant approached Maher and slapped him on the neck and

back without warning; (e) Maher pushed Defendant and Defendant fell to the floor, (f) Maher tried to pick Defendant up and push him toward the door, (g) Maher wanted to take the argument outside the bar, (h) Defendant fired the first shot while Maher was over him, (i) Maher picked up the chair after the first shot; and (8) any conflicts in the testimony of the witnesses or the weight of the evidence was for the jury to decide. See State v. Chen, 77 Hawai'i 329, 338, 884 P.2d 392, 401 (App. 1994) ("For it was within the jury's province to accept or reject part or all of the witnesses' testimony and an appellate court will not attempt to reconcile conflicting evidence, or interfere with a jury decision based on the credibility of witnesses or the weight of the evidence." (Citations and internal marks omitted)).

Therefore,

IT IS HEREBY ORDERED that the court's December 19, 2001 judgment is affirmed.

DATED: Honolulu, Hawai'i, December 11, 2002.

Jon N. Ikenaga, Deputy
Public Defender, for
defendant-appellant.

Mangmang Qiu Brown,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.