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NO. 24413

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JADD S. MATSUDA, Defendant-Appellant

and

BRIAN H. WACHI, Defendant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 00-1-2346)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.  
and Circuit Judge Waldorf, assigned by reason of vacancy)

Plaintiff-appellant the State of Hawai'i [hereinafter, "the prosecution"] appeals from the June 18, 2001 order of the circuit court of the first circuit, the Honorable Sandra A. Simms presiding, dismissing an indictment against Jadd Matsuda (Matsuda), charging one count of unauthorized entry into a motor vehicle (UEMV), in violation of Hawai'i Revised Statutes (HRS) § 708-836.5 (Supp. 2000)<sup>1</sup> [hereinafter, "Count II"], for pre-indictment delay. The prosecution's primary contention on appeal is that the circuit court erred in dismissing the indictment for prejudicial pre-indictment delay because Matsuda failed to establish actual substantial prejudice to his due process right to a fair trial based on his claims of loss of memory, evidence,

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<sup>1</sup> HRS § 708-836.5 provided:

(1) A person commits the offense of unauthorized entry into motor vehicle if the person intentionally or knowingly enters or remains unlawfully in a motor vehicle with the intent to commit a crime against a person or against property rights.

(2) Unauthorized entry into motor vehicle is a class C felony.

and opportunity.<sup>2</sup>

Matsuda, however, counters that he suffered substantial prejudice resulting from the pre-indictment delay, inasmuch as (1) his father's car, "a significant piece of evidence because the instant case involved a test of the credibility of the officer's word against the word of [Matsuda,]" was no longer available, (2) he could no longer recall all the facts related to the alleged incident, (3) he lost the opportunity to enlist in the National Guard, and (4) he was no longer eligible to be sentenced as a young adult under HRS § 706-667. In addition, Matsuda contends that, because the circuit court adopted the

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<sup>2</sup> The prosecution challenges the following findings of fact (FOFs) and conclusions of law (COLs):

FINDINGS OF FACT

- . . . . .
3. The indictment against [Matsuda] relating to the aforementioned alleged offense was not filed until November 15, 2000, nearly two-and-a-half years after the commission of the alleged offense, due solely to the staffing and assignment procedures in the Office of the Prosecuting Attorney. The Deputy Prosecuting Attorney's memorandum in opposition stated that one-and-a-half years had elapse[d], but he conceded at oral argument that was incorrect.
- . . . . .
7. During the same intervening period, [Matsuda's] father relinquished ownership of a vehicle relevant to this case.
8. [Matsuda] could not recall all of the facts relating to the alleged offense.
9. [Matsuda], twenty-years old at the time, made several applications to the National Guard, which were denied due to the pendency of the instant matter.
- . . . . .

CONCLUSIONS OF LAW

11. The delay in bringing the instant indictment was too long, and the reasons for the delay are unjustifiable, resulting in clear inherent prejudice.
12. Pursuant to the balancing test under State v. Carvalho, 79 Haw. 165, 880 P.2d 217 (App. 1994), substantial prejudice incurred to [Matsuda] as the unjustifiable delay in this case resulted in the loss of memory, loss of potential evidence, and loss of opportunity.

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prosecution's proposed FOF, which provided that, "[d]uring the same intervening period, [Matsuda's] father relinquished ownership of a vehicle that was present at the time of the alleged offense. Because [Matsuda] was not the only person charged in this case, the loss of this vehicle may be relevant[,]” the prosecution is now precluded from challenging this finding on appeal.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that the circuit court erred in dismissing the indictment against Matsuda for pre-indictment delay. Although we do not condone the nearly two-and-a-half year delay in the prosecutor's office, we are mindful of this jurisdiction's inquiry with respect to claims of prejudicial pre-indictment delay. In light of this inquiry, we hold that, based on the record before this court, Matsuda failed to establish actual substantial prejudice to his due process right to a fair trial, inasmuch as: (1) Matsuda's mere claim that he only remembered "bits and pieces" of the incident because "[i]t was a long time ago[,]” without more, does not establish prejudice for purposes of a claim of due process violation, especially in light of Matsuda's admission that he gave a tape-recorded statement to the police following his May 1998 arrest and that a transcript of the recording was prepared, see State v. Carvalho, 79 Hawai'i 165, 168, 880 P.2d 217, 220 (App. 1994) (“[A] mere claim of loss of memory coupled with a lapse of time does not, of itself, establish prejudice for purposes of a claim of violation of due process[.]”); (2) despite Matsuda's contention that he was deprived of a significant piece of evidence because his father's

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car, which he was driving on the day of his arrest for the UEMV offense, was given to charity, Matsuda failed to provide any explanation as to (a) the relevance of the car to Count II, or (b) how the car would have aided his defense, other than alleging that “[t]his is a credibility case. There’s one officer and three men. Two of the men pled out on this. It’s the officer’s word against the defendant’s word now, and credibility becomes important. Any significant piece of evidence . . . is important, and that’s why the lost car is important[,]” and, therefore, the prejudice resulting from Matsuda’s purported loss of evidence is speculative at best, see Carvalho, 79 Hawai‘i at 169, 880 P.2d at 221 (“[I]n a claim of pre-indictment delay, ‘the proof must be definite and not speculative’ in order to establish prejudice.” (Citation omitted.)); State v. Faufata, 101 Hawai‘i 256, 266, 66 P.3d 785, 795 (App. 2003); and (3) Matsuda’s claim that he was prejudiced because he lost the opportunity to enlist in the National Guard (a) was discounted by his own testimony that he chose not to continue the enlistment process after the indictment and his admission that, if found not guilty, he would still have the opportunity to enlist in the National Guard, and, (b) did not affect his ability to present an effective defense.<sup>3</sup> As such,

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<sup>3</sup> In his answering brief, Matsuda argues, for the first time, that he lost the opportunity to be sentenced as a young adult under HRS § 706-667. “As a general rule, if a party does not raise an argument at trial, that argument will be deemed to have been waived on appeal[.]” State v. Moses, 102 Hawai‘i 449, 456, 77 P.3d 940, 947 (2003), recons. denied, 103 Hawai‘i 61, 79 P.3d 679 (2003). Therefore, by failing to raise this sentencing issue before the circuit court, Matsuda waived this claim on appeal. Notwithstanding this waiver, State v. Higa, 102 Hawai‘i 183, 74 P.3d 6 (2003), and State v. Keliheleua, 105 Hawai‘i 174, 95 P.3d 605 (2004), confirm that a lost opportunity for sentencing does not affect a defendant’s ability to present an effective defense, and, therefore, does not constitute actual substantial prejudice to a defendant’s right to a fair trial. Higa, 102 Hawai‘i at 189, 74 P.3d at 12; Keliheleua, 105 Hawai‘i at 180, 95 P.3d at 611.

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there was no imperative for the circuit court to consider the reasons for the prosecutorial delay, as it did. See State v. Crail, 97 Hawai'i 170, 180, 35 P.3d 197, 207 (2001) ("[B]ecause Defendant failed to establish substantial prejudice to his right to a fair trial, there is no imperative to consider the reasons for prosecutorial delay." (Citation omitted.)); State v. Keliheleua, 105 Hawai'i 174, 179, 95 P.3d 605, 610 (2004) ("[I]f a defendant fails to show actual substantial prejudice, the inquiry ends and the reasons for the delay need not be addressed." (Internal quotation marks and citation omitted.)). Accordingly, because Matsuda failed to establish actual substantial prejudice to his due process right to a fair trial based on his claims of loss of memory, loss of evidence, and loss of opportunity, dismissal of the indictment for pre-indictment delay was not warranted. Therefore,

IT IS HEREBY ORDERED that the circuit court's June 18, 2001 order dismissing the indictment against Matsuda for pre-indictment delay, from which the appeal is taken, is reversed and the case is remanded for further proceedings.

DATED: Honolulu, Hawai'i, February 25, 2005.

On the briefs:

Loren J. Thomas,  
Deputy Prosecuting Attorney,  
for the plaintiff-appellant  
State of Hawai'i

Logan F. Young  
for the defendant-appellee  
Jadd S. Matsuda