

NOT FOR PUBLICATION

NO. 24899

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
GEORGE A. DUTRO, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 01-1-0344(1))

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant George A. Dutro (Dutro) appeals the Judgment¹ filed on January 16, 2002 in the Circuit Court of the Second Circuit (circuit court).²

On July 9, 2001, Dutro was charged by complaint with the offense of Gambling, in violation of Hawaii Revised Statutes (HRS) § 712-1223(1) (1993).³ Dutro was convicted of the included offense of Attempted Gambling, in violation of HRS §§ 705-500(1) (b) (1993)⁴ and 712-1223(1).

^{1/} Dutro was charged with Gambling, and found guilty of the included offense of Attempted Gambling. However, the Judgment fails to set forth the Hawaii Revised Statutes (HRS) sections under which Dutro was charged and convicted. The circuit court is hereby ordered to file an Amended Judgment setting forth the HRS sections under which Dutro was charged and convicted.

^{2/} The Honorable Rhonda I. L. Loo presided.

^{3/} HRS § 712-1223 (1993) provides as follows:

§712-1223 Gambling. (1) A person commits the offense of gambling if the person knowingly advances or participates in any gambling activity.

(2) Gambling is a misdemeanor.

^{4/} HRS § 705-500(1) (b) (1993) provides as follows:

§705-500 Criminal attempt. (1) A person is guilty of an attempt to commit a crime if the person:

(continued...)

On appeal Dutro argues that (1) the Deputy Prosecuting Attorney committed prosecutorial misconduct, thereby resulting in plain error and entitling him to a new trial; and (2) there was insufficient evidence to convict him of Attempted Gambling.

Upon careful review of 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 resolve Dutro's points of error as follows:

(1) Dutro contends the Deputy Prosecuting Attorney's comments during her closing argument constituted prosecutorial misconduct resulting in plain error and entitling him to a new trial. Assuming *arguendo* that the Deputy Prosecuting Attorney's comments were prosecutorial misconduct, it was harmless beyond a reasonable doubt and there was no plain error. State v. Meyer, 99 Hawai'i 168, 171, 53 P.3d 307, 310 (App. 2002).

(2) Dutro contends there was insufficient evidence to convict him of Attempted Gambling. There was sufficient evidence adduced at trial to convict Dutro of Attempted Gambling. A police officer testified that Dutro was arrested when the police executed a search warrant for gambling contraband. Two hundred

⁴(...continued)

- (b) Intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

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forty-six dollars was found in Dutro's right front pants pocket at the time of his arrest. A police officer testified that Dutro took a step back from a craps table from which money, dice, cards, and a croupier stick were recovered. A witness testified that she saw Dutro standing at the table, leaning over the table with money in his hand, and yelling like everyone else while another person threw the dice. There was sufficient evidence to show Dutro attempted to gamble. State v. Quitog, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997) ("[E]vidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction.").

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on January 16, 2002 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 13, 2004.

On the briefs:

Linda C. R. Jameson,
Deputy Public Defender,
for defendant-appellant.

Chief Judge

Richard K. Minatoya,
Deputy Prosecuting Attorney,
County of Maui,
for plaintiff-appellee.

Associate Judge

Associate Judge