

NOT FOR PUBLICATION

NO. 26424

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
MOSES L. THOMPSON, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 03-1-0055)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Moses L. Thompson, also known as Marcus L. Thompson, (Thompson) appeals from the Judgment filed on February 3, 2004 in the Circuit Court of the First Circuit (circuit court).<sup>1/</sup> A jury found Thompson guilty of the following offenses:

(1) Count 1: Murder in the Second Degree, in violation of Hawaii Revised Statutes (HRS) §§ 707-701.5 (1993) and 706-656 (1993 & Supp. 2005);

(2) Count 2: Place to Keep Pistol or Revolver, in violation of HRS § 134-6(c) and (e) (Supp. 2005); and

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<sup>1/</sup> The Honorable Richard K. Perkins presided.

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STATE OF HAWAII

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(3) Count 3: Carrying, Using or Threatening to Use a Firearm in the Commission of a Separate Felony, in violation of HRS § 134-6(a) and (e) (Supp. 2005).

The circuit court sentenced Thompson to the following concurrent terms of incarceration:

(1) Count 1: Life with the possibility of parole with a mandatory minimum of twenty (20) years for using a semi-automatic firearm in the commission of a felony;

(2) Count 2: Ten (10) years; and

(3) Count 3: Twenty (20) years.

On appeal, Thompson argues: (1) there was insufficient evidence to convict him of Murder in the Second Degree; (2) based on the evidence presented at his trial, Thompson clearly acted in self-defense when he brandished the gun at and struggled for the gun with Eugene Rios, also known as Gino Rios, (Rios); (3) alternatively, the evidence only showed that Thompson committed, at the most, Manslaughter; and (4) even though Thompson withdrew his self-defense instruction to the jury, the circuit court erred by not giving the jury the instruction anyway because there was evidence in the record justifying it.

Based on the foregoing, Thompson asserts that his case should be remanded for a new trial.

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 hold:

(1) There was sufficient evidence to convict Thompson of Murder in the Second Degree. HRS 707-701.5; State v. Van Dyke, 101 Hawai'i 377, 387, 69 P.3d 88, 98 (2003); State v. Rabellizsa, 79 Hawai'i 347, 351-52, 903 P.2d 43, 47-48 (1995).

(2) There was substantial evidence to disprove Thompson acted in self-defense by brandishing the gun at and struggling for the gun with Rios when Rios was shot. HRS § 703-304 (1993 & Supp. 2005); State v. Augustin, 101 Hawai'i 127, 128, 63 P.3d 1097, 1098 (2002); Van Dyck, 101 Hawai'i at 387, 69 P.3d at 98.

(3) There was substantial evidence in the record on appeal showing that Thompson intentionally or knowingly caused Rios's death.

(4) The circuit court did not commit plain error when it gave its supplemental jury instructions 13 and 15 to the jury because those jury instructions were not prejudicially insufficient, erroneous, inconsistent, or misleading. Augustin, 101 Hawai'i at 127, 63 P.3d at 1097; State v. Vanstory, 91 Hawai'i 33, 42-43, 979 P.2d 1059, 1068-69 (1999).

Therefore,

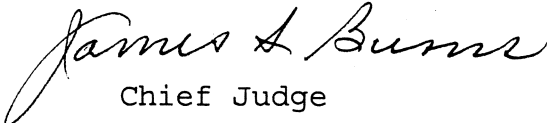
IT IS HEREBY ORDERED that the Judgment filed on February 3, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 9, 2006.

On the briefs:

Shawn A. Luiz  
for Defendant-Appellant.

James M. Anderson,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge