NO. 22897

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

STATE OF HAWAI‘I, Plaintiff-Appellee,

vs.

LANCE C. FARIA, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-0228)

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

Defendant-appellant Lance C. Faria (Defendant) appeals from the first circuit court's conviction of and sentence for robbery in the second degree, in violation of Hawai‘i Revised Statutes (HRS) § 708-841(1)(b) (1993).[1] Defendant contends that the trial court erred by: (1) admitting Honolulu Police Department Officer Eric Lorica's testimony regarding prosecution witness Tony Kapoo's hearsay statement as to what Defendant had said to Kapo‘o; and (2) failing to instruct the jury as to the lesser included offenses of theft in the fourth degree and terroristic threatening in the second degree.

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[1] HRS § 708-841(1)(b) provides that "[a] person commits the offense of robbery in the second degree if, in the course of committing theft . . . [t]he person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property[.]"

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 as follows:

(1) The trial court erred by admitting Officer Lorica's hearsay testimony because the requirements of Hawai'i Rules of Evidence (HRE) Rule 802.1(1) (1993) were not met. However, the error was harmless because the witness's own prior testimony as to Defendant's statements were properly admitted, see HRE Rule 803(a)(1) (1993) (regarding admissions by a party opponent), and "the properly admitted evidence was such that the improperly admitted evidence could not have affected the jury verdict." State v. Kelekolio, 74 Haw. 479, 485, 849 P.2d 58, 62 (1993); see also HRE 103(a) (1993).

(2) The prosecution concedes, and we agree, that the trial court erred by failing to instruct the jury regarding the lesser included offense of theft in the fourth degree under HRS § 708-833 (1993). See HRS § 701-109(4) (1993) (defining included offenses). However, such error was harmless because the jury convicted Defendant of the greater offense. See State v. Haanio, No. 21720 (Haw. Jan. 31, 2001). Moreover, we need not address whether terroristic threatening was a lesser included offense of robbery in the second degree because, in reaching a unanimous verdict as to robbery in the second degree, the jury would not have reached, much less considered, any absent lesser included

offenses of which it should have been instructed. See id.

Therefore,

IT IS HEREBY ORDERED that the judgment from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai‘i, May 21, 2001.

On the briefs:

Michael G.M. Ostendorp
and Shawn A. Luiz, for
defendant-appellant

Donn Fudo, Deputy
Prosecuting Attorney,
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