

NO. 23006

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

DARWIN T. RAMIREZ, Defendant-Appellant

and

KALANI AGOSTO, MARK CALICDAN, and ANASTACIO MARTINEZ, III,  
Defendants

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 98-2266)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Darwin Ramirez appeals from the judgment of the Circuit Court of the First Circuit, the Honorable Marie Milks presiding, convicting him of one count of attempted murder in the first degree, in violation of Hawai'i Revised Statutes (HRS) §§ 705-500 (1993), 707-701(1)(a) (1993), and 706-656 (1993 & Supp. 1999). He argues that the trial court erred in: 1) denying his motion for a judgment of acquittal; 2) excluding evidence of the prior criminal conduct of one of the victims; 3) excluding the proffered testimony of defense witness Joe Rabe; and 4) denying his motion to sever his trial from that of codefendant Mark Calicdan. Ramirez also argues that the cumulative effect of the court's errors deprived him of a fair trial.

Upon careful review of the record and the briefs

submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we resolve defendant-appellant's arguments as follows: 1) the trial court did not err in denying Ramirez's motion for judgement of acquittal because a) there was sufficient evidence to support a reasonable inference that Ramirez had an intent to kill both victims, see State v. Ah Choy, 70 Haw. 618, 624, 780 P.2d 1097, 1101 (1989) (stating that intent can be established through circumstantial evidence and reasonable inferences therefrom), b) Ramirez (i) engaged in conduct that constituted a substantial step in a course of conduct intended to culminate in the commission of the offense, see Commentary to HRS § 705-500 (stating that, inter alia, lying in wait and enticing the intended victim to the intended scene of the offense can constitute substantial steps), and (ii) was legally accountable, as an accomplice, for the actions of Calicdan, Kalani Agosto, Anastacio Martinez, and Chris Martinez, see HRS §§ 702-221(2) (1993) and 702-222 (1993), and c) the fact that none of the other participants were convicted of attempted murder does not preclude Ramirez's conviction, see HRS § 702-225 (1993); 2) the trial court did not err in excluding evidence of the prior criminal acts of one of the victims because the acts established, at most, a modus operandi of verbal harassment, and none of the incidents escalated to physical violence and, thus, were irrelevant to the

present case; see Hawai'i Rules of Evidence Rule 404(b); 3) even if the trial court erred in ruling that Rabe's testimony regarding Santos's statement that he wanted to hire someone to beat up another person constituted hearsay, inasmuch as the statement was not offered to prove the truth of the matter asserted, any potential error was harmless because other witnesses established that Ramirez believed Santos might be setting him up; 4) Ramirez's argument regarding the denial of his motion to sever was not properly preserved for appeal because he did not renew his motion at the close of the prosecution's case-in-chief or at the close of all the evidence, see State v. Balanza, 93 Hawai'i 279, 288, 1 P.3d 281, 290 (2000), and, assuming arguendo that the point of error was properly preserved, the trial court did not err in denying the motion because the cores of Ramirez's and Calicdan's defenses were not in irreconcilable conflict, see State v. Timas, 82 Hawai'i 499, 512, 923 P.2d 916, 929 (App. 1996); and 5) there was no cumulative error that warranted vacating Ramirez's conviction.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, June 28, 2001.

On the briefs:

Craig T. Kimsel of  
Jonathan Burge & Associates  
for defendant-appellant

Donn Fudo, Deputy  
Prosecuting Attorney,  
for plaintiff-appellee