

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

MATTHEW CLEMENT, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-0376)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Matthew Clement appeals from the judgment of conviction and sentence entered on July 18, 2000 by the First Circuit Court, the Honorable Dexter D. Del Rosario presiding, for: Murder in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 707-701.5 (1993);¹ Burglary in the First Degree, in violation of HRS § 708-810(1)(c) (1993);²

¹ HRS § 707-701.5 states in pertinent part: Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person.

² HRS 708-810 states in pertinent part:

(1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

. . . .

(C) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

and Place to Keep Pistol or Revolver, in violation of HRS § 134-6(c) and (e) (1993).³ Clement claims that the trial court erred by: (1) denying his motion to suppress evidence for lack of probable cause; (2) admitting hearsay statements made by the deceased victim, Eleanor Wimberly, through the testimony of Honolulu Police Officer Daniel Gooch (Officer Gooch); (3) admitting hearsay statements made by the Wimberly through the testimony of Wimberly's boyfriend, Duane Sato; (4) precluding Clement from questioning Sato regarding Sato's alleged possession of a firearm one month prior to Wimberly's death; (5) conducting the Tachibana colloquy after the defense had rested; and (6) denying Clement's motion for new trial.

³ HRS § 134-6 states in pertinent part:

(c) Except as provided in sections 134-5 and 134-9, all firearms and ammunition shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms or ammunition or both in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following: a place of repair; a target range; a licensed dealer's place of business; an organized, scheduled firearms show or exhibit; a place of formal hunter or firearm use training or instruction; or a police station.

Enclosed container means a rigidly constructed receptacle, or a commercially manufactured gun case; or the equivalent thereof that completely encloses the firearm.

. . . .

(e) [] Any person violating this section by carrying or possessing a loaded firearm or by carrying or possessing a loaded or unloaded pistol or revolver without a license issued as provided in section 134-9 shall be guilty of a class B felony. Any person violating this section by carrying or possessing an unloaded firearm, other than a pistol or revolver, shall be guilty of a class C felony.

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 that: (1) the trial court properly denied Clement's motion to suppress evidence because the affidavit of Honolulu Police Detective Anderson Hee (Detective Hee), made in support of the search warrant, established probable cause and Clement failed to demonstrate any basis for his allegation that Detective Hee intentionally omitted information that would cast doubt on the existence of probable cause; (2) in light of the testimony of Steven Gileece, an acquaintance of Clement, the trial court's admission of hearsay statements by Wimberly through the testimony of Honolulu Police Officer Daniel Gooch did not unfairly prejudice Clement; (3) the trial court's admission of hearsay statements by Wimberly through Sato's testimony was proper under Hawaii Rules of Evidence (HRE) Rule 804(b)(5); (4) the trial court properly precluded Clement from questioning Sato regarding his alleged possession of a firearm one month prior to Wimberly's death based upon HRE Rule 802, see State v. Taniguchi, 72 Haw. 235, 240, 815 P.2d 24, 26 (1991) (citations omitted) (stating that, where the decision below is correct it must be affirmed by the appellate court even though the lower trial court gave the wrong reason for its action); (5) Clement's contention that the trial court erred in conducting the Tachibana colloquy after the

defense rested is without merit; and (6) because the trial court lacked jurisdiction to entertain Clement's untimely motion for a new trial, we cannot review the merits of Clement's claims.

Therefore,

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

DATED: Honolulu, Hawaii, November 30, 2001.

On the briefs:

Myles S. Breiner,
for defendant-appellant

Bryan K. Sano,
Deputy Prosecuting Attorney,
for plaintiff-appellee