
NO. 22880

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant,

vs.

PHILLIP JOHN HALL, JR., KALEI GABRIEL KIAAINA,
NOELLE CAROL QUEVIDO, AND GENE WILLIAM
SPURGEON, Defendants-Appellees.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-0533)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Intermediate Court of Appeals Associate Judge
Watanabe, assigned by reason of vacancy)

In this consolidated case, plaintiff-appellant State of Hawai'i (the prosecution) appeals from two orders filed in the circuit court of the First Circuit, the Honorable Michael A. Town presiding, that dismissed all charges, with prejudice, as to defendants-appellees Phillip John Hall, Jr., Kalei Gabriel Kiaaaina, Noelle Carol Quevido, and Gene William Spurgeon [hereinafter, collectively, Defendants]. Specifically, the prosecution appeals from: (1) the September 13, 1999 order granting Quevido's motion to dismiss grand jury indictment [hereinafter, the Quevido Grand Jury Dismissal Order], arguing that the trial court erred in dismissing all counts against

Quevido based on a prosecution witness having given false testimony; and (2) the September 24, 1999 order granting Hall's motion to suppress evidence and Defendants' oral motion to dismiss with prejudice [hereinafter, the Hall Dismissal Order], based on an illegal search, arguing that the Defendants were given a reasonable opportunity to respond to the police knock-and-announce before forcible entry was made.

Additionally, Defendants raise jurisdictional and procedural objections to the prosecution's appeal. Specifically, Defendants maintain that this appeal should be dismissed because the prosecution failed to: (1) designate and append a copy of the September 14, 1999 order granting Quevido's motion to suppress evidence and her oral motion to dismiss [hereinafter, the Quevido Suppression/Dismissal Order], in violation of Hawai'i Rules of Appellate Procedure (HRAP) Rule 3(c)(2); and (2) challenge any of the findings of fact (FOFs) and conclusions of law (COLs) in support of the Hall Dismissal Order, in violation of HRAP Rule 28(b)(4). Instead, the prosecution challenges only the COLs set forth in the Quevido Suppression/Dismissal Order.

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, we resolve each of the contentions as follows.

First, this court has held that, as a general rule, "the requirement that the notice of appeal designate the judgment or part thereof appealed from is not jurisdictional." City & County v. Midkiff, 57 Haw. 273, 275-76, 554 P.2d 233, 235 (1976) (citations omitted). This rule applies "as long as the intention to appeal from a specific judgment [or part thereof] can be fairly inferred from the notice and the appellee is not misled by the mistake.'" See State v. Graybeard, 93 Hawai'i 513, 516, 6 P.3d 385, 388 (App. 2000) (quoting Midkiff, 57 Haw. at 275-76, 554 P.2d at 235 (citation omitted)). The prosecution's appeal from the Hall Dismissal Order, which dismissed all of the charges against all of the Defendants, including Quevido, with prejudice clearly demonstrated the prosecution's intention to challenge the dismissal of charges against each of the Defendants, and there is nothing in the record to indicate, nor have the Defendants presented any evidence, that they were misled by the prosecution's failure to specifically designate the Quevido Suppression/Dismissal Order in its notice of appeal. We, therefore, hold that the Defendants' jurisdictional argument is without merit.

Second, Defendants correctly point out that the prosecution has failed to specifically challenge any of the FOFs and COLs set forth in the Hall Dismissal Order that ultimately resulted in the dismissal of charges against them, including Quevido. Pursuant to HRAP Rule 28(b)(4)(C), FOFs and COLs not

specified as error are treated as binding on appeal.¹ See, e.g., State v. Sanford, 97 Hawai'i 247, 256, 35 P.3d 764, 773 (App. 2001) (citing Leibert v. Finance Factors, Ltd., 71 Haw. 285, 288, 788 P.2d 833, 835 (1990)); State v. Carvalho, 101 Hawai'i 97, 104 n.16, 63 P.3d 405, 412 n. 16 (App. 2002) (citing Amfac, Inc. v. Waikiki Beachcomber Investment Co., 74 Haw. 85, 125, 839 P.2d 10, 31 (1992)); see also State v. Barros, 98 Hawai'i 337, 343 n.4, 48 P.3d 584, 590 n.4 (2002) ("[A]n attack on a conclusion which is supported by a finding is not an attack on that finding. If a finding is not properly attacked, it is binding; and any conclusion which follows from it and is a correct statement of law is valid.") (quoting Wisdom v. Pflueger, 4 Haw. App. 455, 459, 667 P.2d 844, 848 (1983)). In light of the prosecution's failure to cite to the specific FOFs and COLs set forth in the Hall Dismissal Order, we affirm the dismissal of charges as to Hall, Kiaaina, and Spurgeon. However, in light of our discussion regarding the Defendants' jurisdictional challenge, we disagree with the Defendants' contention that the prosecution's failure to designate the Quevido Suppression/Dismissal Order precludes the

¹ HRAP Rule 28(b)(4) requires appellants to set forth all points of error by: (1) identifying the alleged error, (2) noting where in the record the error occurred; and (3) noting the manner in which the error was brought to the attention of the trial court. HRAP Rule 28(b)(4) also clearly indicates that "points not presented in accordance with [the Rule] will be disregarded."

prosecution from challenging its FOFs and COLs as it pertains to Quevido.²

The prosecution maintains that the occupants of the residence (one of which was Quevido) were given a reasonable opportunity to respond to the police knock-and-announce before forcible entry was made. Based on our review of the record, the applicable case law, and the prosecution's concession that exigent circumstances did not exist, we hold that the trial court did not err in ruling that, pursuant to State v. Garcia, 77 Hawai'i 461, 887 P.2d 671 (App. 1995), eight seconds was insufficient to afford the occupants a reasonable opportunity to open the door. See State v. Monay, 85 Hawai'i 282, 284, 943 P.2d 908, 910 (1997). Therefore,

IT IS HEREBY ORDERED that: (1) the Hall Dismissal Order as it pertains to Hall, Kiaaina, and Spurgeon is affirmed; (2) the Hall Dismissal Order as it pertains to Quevido and the Quevido Suppression/Dismissal Order are affirmed; and (3) in

² Although the Quevido Suppression/Dismissal Order was a separate appealable order under HRS §§ 641-13(1) and -13(7), the prosecution's failure to specifically designate and attach it to the notice of appeal is not fatal to its appeal insofar as the Quevido Suppression/Dismissal Order is clearly related to the Hall Dismissal Order with respect to the dismissal of the charges against Quevido. Cf. State v. Apao, 59 Haw. 625, 586 P.2d 250 (1978) (stating that, even though appellant's opening brief challenged only a pretrial in limine ruling, but failed to designate the court's ruling on the same subject during trial, supreme court would consider both rulings as they addressed the same issue).

light of the foregoing, we dismiss the prosecution's appeal from the Quevido Grand Jury Dismissal Order as moot.

DATED: Honolulu, Hawai'i, September 3, 2003.

On the briefs:

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