

*** NOT FOR PUBLICATION ***

NO. 25380

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

WILLIAM J. KOTIS, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 92-2780)

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LEONARD
STATE COURTS

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ. and
Circuit Judge Crandall, in place of Acoba, J., recused)

Defendant-appellant William J. Kotis [hereinafter
"Kotis"] appeals from the September 6, 2002 judgment of the first
circuit court, the Honorable Richard K. Perkins presiding,
convicting Kotis of the offenses of second degree murder, in
violation of Hawai'i Revised Statutes [hereinafter "HRS"] § 707-
701.5 (Supp. 1992),¹ kidnapping, in violation of HRS § 707-720
(Supp. 1992),² and first degree terroristic threatening, in

¹ HRS § 707-701.5 provides, in pertinent part:
Murder in the second degree. (1) 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 § 707-720 provides:
Kidnapping. (1) A person commits the offense of kidnapping
if the person intentionally or knowingly restrains another person
with intent to:
(a) Hold that person for ransom or reward;
(b) Use that person as a shield or hostage;
(c) Facilitate the commission of a felony or flight
thereafter;
(d) Inflict bodily injury upon that person or subject that
person to a sexual offense;
(e) Terrorize that person or a third person; or
(f) Interfere with the performance of any governmental or
political function.
(2) Except as provided in subsection (3), kidnapping is a
class A felony.

(continued...)

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violation of HRS § 707-716 (Supp. 1992),³ for shooting and killing his wife, Lynn Kotis.

On appeal, Kotis asserts the following points of error: (1) the circuit court erred when it determined that Kotis was fit to proceed with trial; (2) the circuit court erred when it failed, sua sponte, to order another fitness examination based upon Kotis' bizarre behavior during the course of trial; (3) the circuit court erred when it denied Kotis' oral motion to dismiss, pursuant to Hawai'i Rules of Penal Procedure [hereinafter "HRPP"] Rule 48; (4) Kotis did not knowingly and intelligently waive his right to a jury trial; (5) the circuit court erred by denying Kotis' motion to proceed pro se, and by denying defense counsel's motions to withdraw; and (6) the circuit court erred when it found that Kotis was not acting under the influence of an extreme

²(...continued)

(3) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial.

³ HRS § 707-716 provides:

Terroristic threatening in the first degree. (1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

(a) By threatening another person on more than one occasion for the same or a similar purpose; or

(b) By threats made in a common scheme against different persons; or

(c) Against a public servant, including but not limited to an educational worker, who for the purposes of this section shall mean an administrator, specialist, counselor, teacher, or other employee of the department of education, or a volunteer as defined by section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education, or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function; or

(d) With the use of a dangerous instrument.

(2) Terroristic threatening in the first degree is a class C felony.

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mental or emotional disturbance for which there was a reasonable explanation.

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 hold as follows: (1) although Kotis exhibited some indicia of mental infirmity, the record indicates that the circuit court did not abuse its discretion when it determined that Kotis was fit to proceed with trial; see State v. Janto, 92 Hawai'i 19, 28 n.3, 986 P.2d 306, 315 n.3 (1999) (stating that the test is "whether the defendant either (1) lacks capacity to understand the proceedings against him or her; or (2) lacks capacity to assist in his or her defense."); Dusky v. United States, 362 U.S. 402, 402 (1960) (stating that the test is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him") (brackets added); (2) although we are cognizant of a trial court's duty to order a fitness hearing where the circumstances cast sufficient doubt on a defendant's competence to stand trial,⁴ we cannot conclude that the circuit court abused its discretion in failing to suspend the proceedings inasmuch as the circuit court had before it testimony from expert witnesses that Kotis was fabricating his symptoms for secondary gain; (3) the circuit court did not err by denying Kotis' HRPP Rule 48 motion

⁴ See State v. Tyrell, 60 Haw. 17, 22, 586 P.2d 1028, 1031-1032 (1978) ("Since the issue is the defendant's incompetency, it is the duty of the trial court to order [sua sponte] a hearing on competency when what is before it sufficiently indicates that the defendant may be incompetent to stand trial.").

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to dismiss inasmuch as defense counsel's repeated avoidance of trial constituted an implied continuance,⁵ excludable under HRPP Rule 48(c)(3); see State v. Miller, 4 Haw. App. 603, 607, 671 P.2d 1037, 1040 (1983) ("The record shows that the continuance was of an indefinite duration, which meant that the case was off the trial calendar until moved on by either party or the court. . . . Since the defendants did not request an end to the continuance, the entire period . . . is an excluded period under [HRPP Rule 48(c)(3)]."); (4) considering the totality of the circumstances,⁶ Kotis knowingly, intelligently, and voluntarily waived his right to a jury trial inasmuch as Kotis' irrational statements during his colloquy with the court does not ipso facto establish that Kotis did not understand his constitutional right to a jury trial thus nullifying any forthcoming waiver;⁷ (5) although criminal defendants have a constitutional right to self-

⁵ See State v. Rouse, 688 N.W.2d 889, 894 (Neb. Ct. App. 2004) (recognizing the concept of an implied continuance in the context of Nebraska's speedy trial statute); State v. Blazio, 756 So.2d 606, 610 (La. Ct. App. 2000) (stating that defense attorney's failure to appear would constitute an implied continuance chargeable against defendant for purposes of the Louisiana speedy trial statute).

⁶ See State v. Friedman, 93 Hawai'i 63, 69, 996 P.2d 268, 274 (2000) ("Rather than adhering to a rigid pattern of factual determinations, we have long observed that the validity of a waiver concerning a fundamental right is reviewed under the totality of the facts and circumstances of the particular case.").

⁷ The record indicates that: (1) Kotis exhibited a normal level of cognitive ability at the Hawai'i State Hospital; (2) Kotis frequently asserted his rights at various times throughout the proceedings (e.g., his submission of numerous pro se motions -- including motions to change venue, for "jurisdiction in persona," for a continuance, for suppression of evidence, and also a motion in limine -- and his assertion of his right to proceed pro se), displaying his general ability to comprehend court proceedings; and (3) at the fourth hearing to determine Kotis' fitness to proceed, Drs. Gitter, Stein, Merrill, Taniguchi, and Hall, as well as psychiatric nurse Wells reported that Kotis was fabricating his symptoms for secondary gain.

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representation,⁸ Kotis was not deprived of this right inasmuch as (a) he was allowed to self-advocate at the crucial moments during trial, and (b) he may not invoke his right of self-representation to abuse the dignity of the courtroom;⁹ see State v. Hutch, 75 Haw. 307, 323, 861 P.2d 11, 19 (1993) (stating that a trial court may "terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct" because "[t]he right to self-representation is not a license to abuse the dignity of the courtroom.") (citation omitted); United States v. Kaczynski, 239 F.3d 1108, 1118 (9th Cir. 2001) ("Having found that the request for self-representation was for tactical reasons and not for any good faith reason other than delay, the court properly denied Kaczynski's Faretta request. His [s]ixth [a]mendment rights were not violated."); and (6) there was sufficient evidence to support Kotis' conviction of second degree murder inasmuch as the evidence, when viewed in the light most favorable to the prosecution, indicated that Kotis' execution of

⁸ See Faretta v. California, 422 U.S. 806, 819 (1975) (stating that the right to self-representation is "necessarily implied by the structure of the [sixth] [a]mendment") (brackets added); State v. Hutch, 75 Haw. 307, 321-322, 861 P.2d 11, 19 (1993) (stating that "inasmuch as the United States Supreme Court has deemed the right of self-representation to be implicit in the sixth amendment to the United States Constitution and the sixth amendment is applicable to the states through the fourteenth amendment, it therefore follows, and we so hold, that the same right is guaranteed by article I, section 14 of the Hawaii Constitution") (footnote omitted).

⁹ The record indicates that Kotis constantly interrupted the proceedings, often swearing or making inappropriate remarks, accused testifying witnesses of lying, and accused the prosecution, defense counsel, and the court of being part of a conspiracy against him. On at least nine separate occasions, Kotis left the courtroom and refused to return. On at least four separate occasions, Kotis was involuntarily removed by the sheriff for his disruptive behavior. At one point, Kotis slammed his head on defense counsel's table several times and ran head first into the wall of the clerk's station three times before being subdued by the sheriff. On another occasion, Kotis exhibited a violent and vulgar outburst, which culminated in his throwing a briefcase which hit the prosecuting attorney in the head.

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his wife was premeditated and that, although Kotis was upset about being separated from his wife, he did not suffer from EMED. See State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995) ("The test on appeal in reviewing the legal sufficiency of the evidence is whether, when viewing the evidence in the light most favorable to the prosecution, substantial evidence exists to support the conclusion of the trier of fact.") (Emphasis added.). Therefore,

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

DATED: Honolulu, Hawai'i, January 25, 2006.

On the briefs:

Dwight C.H. Lum
for defendant-appellant
William J. Kotis

James M. Anderson,
Deputy Prosecuting Attorney,
for plaintiff-appellee
State of Hawai'i

