

*** NOT FOR PUBLICATION ***

NO. 25633

IN THE SUPREME COURT OF THE STATE OF HAWAII

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E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

RODNEY S. LANOSA, also known as RODNEY S. LANOZA,
also known as RODNEY A. LANOZA, Defendant-Appellant.

APPEAL FROM THE SECOND CIRCUIT COURT
(Cr. No. 01-1-0292)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Nakayama, JJ., and Duffy, J.,
dissenting, with whom Acoba, J., joins)

The defendant-appellant Rodney S. Lanosa appeals from the January 17, 2003 judgment of the circuit court of the second circuit, the Honorable Joel E. August presiding.

On appeal, Lanosa contends that (1) "the police failed to scrupulously honor [his] wish not to give a statement"; (2) he "was deprived of . . . a fair and impartial trial by jury taint"; and (3) the circuit "court abused [its] discretion in sentencing [Lanosa] to an enhanced prison term on factors that were not established by a jury[,] . . . stipulated to by [Lanosa], [or] based upon a prior conviction."

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 affirm the circuit court's January 17, 2003 judgment for the following reasons:

(1) Inasmuch as the record on appeal contains substantial evidence in support of the circuit court's findings

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of fact (FOFs) that "[t]here appear[ed] to be no evidence . . . of physical mistreatment . . . , . . . verbal threats[,] . . . coercion . . . or promise[(s)]," and that Lanosa "did not appear to be disoriented in any way, but . . . appeared to answer the questions appropriately [and] to be alert"; and these FOFs fail to engender a "definite and firm conviction that a mistake has been committed," the circuit court did not clearly err in so finding.

(2) Lanosa's refusal to make a statement to Detective Silva did not operate as an ongoing barrier to the admissibility of a separate statement -- concerning a different matter, elicited by a different detective (Lee), two hours after Detective Lee obtained Lanosa's signature on a different waiver. See State v. Uganiza, 68 Haw. 28, 31, 702 P.2d 1352, 1355 (1985) ("[T]he right to remain silent does not create a per se proscription of infinite duration upon any further police-initiated questions; the test being whether assertion of the right was scrupulously honored.") (citing Michigan v. Mosely, 423 U.S. 96 (1975)).

(3) Lanosa waived his objection to alleged jury taint. Notwithstanding its voir dire of juror Greg Jones, the defense never actually objected to his continued participation as a juror. Confronted by trial-court error, the defendant may not play "wait and see," crying "Foul!" if and when he is convicted.

(4) Even assuming arguendo that Lanosa was "no longer under the influence of crystal methamphetamine," the circuit court's sentencing Lanosa to a mandatory minimum term as a

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"multiple offender," see Hawai'i Revised Statutes § 706-662(4), was based upon his simultaneous and multiple convictions by the jury. Accordingly, the circuit court did not violate Lanosa's rights under the sixth amendment to the United States Constitution. See generally State v. Rivera, 106 Hawai'i 146, 102 P.3d 1044 (2004).

(5) We decline to exercise our equitable discretion pursuant to the plain error doctrine, inasmuch as this outcome does not appear to jeopardize Lanosa's "substantial rights." See State v. Cullen, 86 Hawai'i 1, 8, 946 P.2d 955, 962 (1997).

Therefore,

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

DATED: Honolulu, Hawai'i, March 10, 2006.

On the briefs:
Shawn A. Luiz,
for the defendant-appellant
Rodney S. Lanosa

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
for the plaintiff-appellee
State of Hawai'i

