

SUPREME COURT OF HAWAI‘I

State v. Valdivia, 95 Haw. 465

24 P.3d 661 (2001) · No. No. 23556 · Decided June 7, 2001

SUMMARY

The Supreme Court of Hawai‘i held that sufficient evidence supported Jose Luis Valdivia’s kidnapping and first-degree terroristic-threatening convictions. It concluded that prosecutorial misconduct was harmless beyond a reasonable doubt but that the jury instructions regarding terroristic threatening were insufficient and prejudicial. The court vacated the terroristic-threatening conviction and remanded for a new trial on that charge, affirming the judgment in all other respects.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Levinson, J.; Moon, C.J.; Nakayama, J.; Ramil, J.; Acoba, J.
JURISDICTION	Hawaii
DECIDED	June 7, 2001
DOCKET	No. 23556
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Valdivia appealed his circuit-court convictions and sentences, challenging the sufficiency of the evidence supporting kidnapping and first-degree terroristic-threatening convictions, the jury instructions defining a true threat, and alleged prosecutorial misconduct.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed in the strongest light for the prosecution to determine whether substantial evidence supports each material element of the offense. Jury instructions are reviewed as a whole for prejudicial insufficiency, error, inconsistency, or misleading content; erroneous instructions are presumptively harmful unless harmlessness is affirmatively shown beyond a reasonable doubt. Prosecutorial misconduct is reviewed under the harmless-beyond-a-reasonable-doubt standard. Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Hawai‘i.
PARTIES	Jose Luis Valdivia v. State of Hawai‘i

TOPICS

criminal procedure

jury instructions

first amendment

free speech

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether substantial evidence supported Valdivia's kidnapping conviction, including proof that he intentionally or knowingly restrained Officer Heatherly and intended to inflict bodily injury.
2. Whether substantial evidence supported Valdivia's first-degree terroristic-threatening conviction based on his statement to Officer Kawelo.
3. Whether the jury was properly instructed that a constitutionally punishable true threat must carry an imminent prospect of execution and be objectively capable of inducing reasonable fear of bodily injury.
4. Whether the jury should have been instructed to consider relevant attributes of the defendant and the person threatened in assessing whether the threat was objectively reasonable.
5. Whether prosecutorial misconduct deprived Valdivia of a fair trial or barred reprosecution under double-jeopardy principles.

HOLDINGS

1. The prosecution presented substantial evidence that Valdivia intentionally or knowingly restrained Officer Heatherly and did so with the intent to inflict bodily injury, supporting the kidnapping conviction under HRS § 707-720(1)(d).
2. The evidence was sufficient for a reasonable juror to conclude that Valdivia's statement to Officer Kawelo was a constitutionally unprotected true threat and that Valdivia possessed the apparent ability to carry it out.
3. The circuit court's true-threat instruction was prejudicially insufficient because it omitted the requirement that the threat carry an imminent prospect of execution and be objectively susceptible to inducing reasonable fear of bodily injury in a person familiar with the circumstances.
4. The jury should have been instructed that it could consider relevant attributes of both the defendant and the person threatened in determining whether the alleged threat was objectively capable of inducing reasonable fear of bodily injury.
5. Any prosecutorial misconduct was harmless beyond a reasonable doubt and did not require reversal, bar reprosecution, or implicate the double-jeopardy protections recognized in *State v. Rogan*.

KEY QUOTATIONS

"Thus, we agreed in Chung with the Kelner court that a remark threatening bodily injury ceases to be constitutionally protected and ripens into a "true threat" when it is objectively susceptible to an interpretation that could induce fear of bodily injury in a reasonable recipient, at whom the remark is directed and who is aware of the circumstances under which it was uttered, because those circumstances reflect that the

threatening remark was "so unequivocal, unconditional, immediate[,] and specific as to the person threatened, [that it] convey[ed] a gravity of purpose and imminent prospect of execution."” (95 Haw. 672)

“We agree with the California Supreme Court that the "imminency" required by Kelner, and hence by Chung, can be established by means other than proof that a threatening remark will be executed immediately, at once, and without delay.” (95 Haw. 673)

“That being the case, the particular attributes of the defendant and the subject of the threatening utterance are surely relevant in assessing whether the induced fear of bodily injury, if any, is objectively reasonable.” (95 Haw. 675)

FACTUAL BACKGROUND

During a struggle at a vehicle, Valdivia pinned Honolulu Police Officer Brad Heatherly's arm against the steering wheel and dragged him approximately thirty yards while driving away. After his arrest, Valdivia repeatedly threatened Officer Shannon Kawelo, including by stating at the hospital, "I'm gonna kill you and your police uniform." Valdivia was handcuffed and restrained when he made the hospital statement, but the evidence showed that pepper spray had little effect on him and that four officers were required to subdue him.

PROCEDURAL HISTORY

Valdivia was charged in the first circuit court with multiple offenses arising from incidents on November 3, 1999. The circuit court denied his motions for judgment of acquittal, and the jury convicted him of, among other offenses, kidnapping and first-degree terroristic threatening. The Supreme Court of Hawai‘i held that the evidence was sufficient and that prosecutorial misconduct was harmless beyond a reasonable doubt, but vacated the first-degree terroristic-threatening conviction because the jury instructions were prejudicially insufficient and remanded for a new trial on that offense.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The conviction and sentence for first-degree terroristic threatening in count 3 are vacated, and the case is remanded for a new trial on that offense. The judgment of conviction and sentence is affirmed in all other respects.

CASES CITED

- State v. Young, 93 Hawai‘i 224, 999 P.2d 230 (2000)
- State v. Jenkins, 93 Hawai‘i 87, 997 P.2d 13 (2000)
- State v. Valentine, 93 Hawai‘i 199, 998 P.2d 479 (2000)
- State v. Balisbisana, 83 Hawai‘i 109, 924 P.2d 1215 (1996)
- State v. Holbron, 80 Hawai‘i 27, 904 P.2d 912 (1995), reconsideration denied, 80 Hawai‘i 187, 907 P.2d 773

- State v. Sanchez, 82 Hawai‘i 517, 923 P.2d 934 (App.), cert. denied, 84 Hawai‘i 127, 930 P.2d 1015 (1996)
- State v. Samuel, 74 Haw. 141, 838 P.2d 1374 (1992)
- State v. Rogan, 91 Hawai‘i 405, 984 P.2d 1231 (1999)
- State v. Sawyer, 88 Hawai‘i 325, 966 P.2d 637 (1998)
- State v. Rauch, 94 Hawai‘i 315, 13 P.3d 324 (2000)
- State v. Chung, 75 Haw. 398, 862 P.2d 1063 (1993)
- United States v. Kelner, 534 F.2d 1020 (2d Cir.), cert. denied, 429 U.S. 1022 (1976)
- United States v. Sovie, 122 F.3d 122 (2d Cir. 1997)
- In re M.S., 10 Cal. 4th 698, 42 Cal. Rptr. 2d 355, 896 P.2d 1365 (1995)
- State v. Alston, 75 Haw. 517, 865 P.2d 157 (1994)
- In the Interest of Doe, 76 Hawai‘i 85, 869 P.2d 1304 (1994)
- State v. Marsh, 68 Haw. 659, 728 P.2d 1301 (1986)
- State v. Padilla, 57 Haw. 150, 552 P.2d 357 (1976)
- State v. Clark, 83 Hawai‘i 289, 926 P.2d 194 (1996)
- Rankin v. McPherson, 483 U.S. 378, 107 S. Ct. 2891, 97 L. Ed. 2d 315 (1987)