

NO. 23181

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

GABRIEL KERESS, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-1898)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Gabriel Keress (Keress) appeals from the February 14, 2000 judgment of the circuit court of the first circuit, the Honorable Virginia Lea Crandall presiding, finding Keress guilty of Assault in the Third Degree, in violation of Hawai'i Revised Statutes (HRS) § 707-712(1)(a) (1993).¹ On appeal, Keress argues that: (1) there was insufficient evidence for a jury to convict him of assault, inasmuch as the State of Hawai'i [hereinafter the prosecution] failed to meet its burden of disproving that Keress acted in self defense; and (2) the circuit court erred in permitting the prosecution to call Dina Gracin (Gracin) as a rebuttal witness, or in the alternative, at least erred in permitting her to testify to matters beyond the issues delineated by the circuit court.

¹ HRS § 707-712(1)(a) provides in relevant part that "(1) A person commits the offense of assault in the third degree if the person: (a) Intentionally, knowingly, or recklessly causes bodily injury to another person"

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 that: (1) considering the evidence in the strongest light for the prosecution, there was credible evidence of sufficient quality and probative value to enable a person of reasonable caution to conclude that Keress was not justified in using unlawful force against watchman Eric Rice; and (2) the circuit court did not abuse its discretion in permitting the rebuttal testimony of Gracin, inasmuch as (a) Hawai'i Rules of Evidence (HRE) Rule 608(b)² afforded the circuit court the discretion to do so, and (b) the prosecution's questioning was within the scope delineated by the circuit court. Therefore,

IT IS HEREBY ORDERED that the circuit court's judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 14, 2003.

On the briefs:

Richard S. Kawana,
for defendant-appellant
Gabriel Keress

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

² HRE Rule 608(b) provides in relevant part that "[s]pecific instances of the conduct of a witness, for the purpose of attacking the witness' credibility, if probative of untruthfulness, may be inquired into on cross-examination of the witness and, in the discretion of the court, may be proved by extrinsic evidence."