

NO. 23476

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JAMES FREIMARK, Defendant-Appellant

APPEAL FROM THE FIFTH CIRCUIT COURT
(FC-CR NO. 99-0192)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Defendant-appellant James Freimark appeals the judgment of the family court of the fifth circuit, the Honorable Calvin Murashige presiding, convicting him of abuse of a family and household members, in violation of Hawai'i Revised Statutes (HRS) § 709-906 (Supp. 2000). On appeal, Freimark argues that the family court erred in: (1) denying his right to a jury trial by failing to obtain a voluntary waiver; and (2) convicting him of abuse of family and household members because (a) the evidence was insufficient to disprove the parental discipline defense, (b) notwithstanding the parental discipline defense, the evidence was insufficient to prove he physically abused his son, and (c) the evidence was insufficient to prove the requisite state of mind.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised, we resolve defendant-appellant's arguments as follows: (1) the family court's failure to obtain a knowing and intelligent waiver constitutes reversible

error; and (2) because the evidence was sufficient to support Freimark's conviction of abuse of a family and household member and disprove the parental discipline defense, jeopardy has not attached.

THEREFORE, IT IS HEREBY ORDERED that the family court's judgment of conviction is vacated and the case remanded for a new trial.

DATED: Honolulu, Hawai'i, November 14, 2001.

On the briefs:

Tracy S. Fukui,
Deputy Public Defender,
for defendant-appellant

Tracy Murakami, Deputy
Prosecuting Attorney,
for plaintiff-appellee