

NO. 23743

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

NANCY KAMISATO, Defendant-Appellant.

---

APPEAL FROM THE SECOND CIRCUIT COURT  
(CR. NO. 98-0629(2))

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Nancy Kamisato appeals from the second circuit court's judgment, the Honorable Shackley F. Raffetto presiding, convicting her of and sentencing her for the offense of theft in the second degree, in violation of Hawai'i Revised Statutes § 708-831(1)(b) (Supp. 2000). On appeal, Kamisato contends that the circuit court plainly erred in failing to instruct the jury as follows: "The defendant in this case has testified. When a defendant testifies, [her] credibility is to be tested in the same manner as any other witness."

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 the circuit court did not plainly err in failing to instruct the jury as Kamisato proposed. Contending that "the credibility of the witnesses was the sole issue that had to be decided by the jury," the crux of Kamisato's argument is that, "without [her proposed] instruction, the jury could infer that[,] because she had an interest in the outcome [of the case], her testimony would be suspect and therefore not worthy of belief as compared to the

other . . . witnesses." However, Kamisato's proposed instruction merely instructed the jury to assess Kamisato's credibility "in the same manner as [it would] any other witness." As such, her proposed instruction referred the jury to the circuit court's general instruction concerning the factors that the jury could consider in assessing each witness' credibility. That instruction expressly and unambiguously allowed the jury to consider a witness' interest in the outcome of the case in determining whether his or her testimony was credible. Kamisato does not challenge the circuit court's general "witness credibility" instruction, pursuant to which the jury was permitted to assess Kamisato's credibility as a witness in light of her status as the defendant and her interest in not being convicted. Thus, we cannot say that the circuit court's failure to give Kamisato's proposed jury instruction was prejudicial. In other words, to the extent that the circuit court erred in failing specifically to instruct the jury that it should treat Kamisato's testimony "in the same manner as any other witness," its error was harmless beyond a reasonable doubt. Therefore,

IT IS HEREBY ORDERED that the second circuit court's judgment of conviction and sentence from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, January 16, 2002.

On the briefs:

Linda C.R. Jameson, Deputy  
Public Defender, for the  
defendant-appellant  
Nancy Kamisato

Simone C. Polak, Deputy  
Prosecuting Attorney, for  
the plaintiff-appellee  
State of Hawai'i