

NO. 24281

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
ALLEN PAUL BRANCO, Defendant-Appellant,
and SAMUEL K. PUA, Defendant.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 95-0460)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Lim, JJ.)

Allen Paul Branco (Defendant) appeals the April 18, 2001 judgment of the circuit court of the third circuit, the Honorable Riki May Amano, judge presiding, that convicted him, upon a jury's verdict, of one count of kidnapping, in violation of Hawaii Revised Statutes (HRS) § 707-720(1)(d) (1993), and one count of sexual assault in the first degree, in violation of HRS § 707-730(1)(a) (1993 & Supp. 2001).

After a sedulous review of the record and the briefs submitted by the parties, and giving due consideration to the arguments advanced and the issues raised by the parties, we resolve Defendant's points of error as follows:

(1) Defendant contends "[t]he trial court erroneously precluded Defendant from cross-examining the Complainant as to

whether she had a motive to fabricate the allegations of kidnapping and sexual assault.” Opening Brief at 26. We disagree. Although the court sustained the State’s objections to a few of the questions posed by defense counsel in his cross-examination of the Complainant, questions which merely sought conclusory admissions of prevarication from the Complainant, the record reveals that defense counsel was otherwise permitted on cross-examination to elicit copious evidence from the Complainant, concerning what Defendant alleged were her motives to lie. Defense counsel also outlined that evidence in his opening statement and explained his interpretation of that evidence in his closing argument. Hence, “the jury had sufficient information from which to make an informed appraisal of [the Complainant’s] motives and bias,” and therefore, “the trial court’s limitation on [Defendant’s] right to cross-examine [the Complainant] to show motive to bring false charges and testify falsely . . . was not an abuse of discretion.” State v. Balisbisana, 83 Hawai’i 109, 116, 924 P.2d 1215, 1222 (1996) (citation omitted).

(2) Defendant also complains that he “received ineffective assistance of counsel because his attorney did not object to prosecution witnesses who repeatedly characterized the Complainant as ‘the victim.’” Opening Brief at 26. This point is devoid of merit. The court gave the jury instructions that,

in State v. Nomura, 79 Hawai'i 413, 417-18, 903 P.2d 718, 722-23 (App. 1995), we held were sufficient to dissipate any prejudice caused by the Nomura trial court's use of the word "victim" in its jury instructions. *A fortiori*, these instructions were here sufficient to dissipate similar prejudice, if any, arising out of the use of the word by witnesses. Hence, defense counsel's failure to object to the use of the word "victim" did not "result[] in either the withdrawal or substantial impairment of a potentially meritorious defense[,] " and therefore, did not constitute ineffective assistance of counsel. State v. Edwards, 81 Hawai'i 293, 300, 916 P.2d 703, 710 (1996) (citation and internal block quote format omitted).

(3) Defendant also asserts that he "received ineffective assistance of counsel because his attorney did not object when Officer [Jason] Arbles testified that he had 'determined there was a sexual assault.'" Opening Brief at 26. Going beyond this statement of his final point of error, Defendant also argues on appeal that his trial counsel was ineffective for failing to object when Officer Arbles testified that he interviewed the Complainant in order to "establish if there actually was a sexual assault." These final points of error must also fail. First, Defendant misconstrues the record, inasmuch as the phrase "determined there was a sex assault" is taken not from Officer Arbles' testimony, but from the

prosecutor's question: "And what would happen if you determined there was a sex assault? What would the procedure be?" Hence, Officer Arbles did not testify that he had "determined there was a sexual assault." At any rate, the question elicited information on general police procedure, rather than comment on an ultimate issue of fact. With respect to Officer Arbles' testimony that he interviewed the Complainant in order to "establish if there actually was a sexual assault[,] " read in context, this testimony related the reason Officer Arbles went to the Complainant's home, and did not constitute an ultimate conclusion that a sexual assault had occurred. Thus, the purportedly objectionable aspects of Officer Arbles' testimony were unexceptionable, and as such could not give rise to "specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence[,] " much less any errors that "resulted in either the withdrawal or substantial impairment of a potentially meritorious defense." Edwards, 81 Hawai'i at 300, 916 P.2d at 710 (citation and internal block quote format omitted). Hence, trial counsel was not ineffective.

Therefore,

IT IS HEREBY ORDERED that the April 18, 2001 judgment
is affirmed.

DATED: Honolulu, Hawai'i, December 12, 2002.

On the briefs:

Valerie A. Vargo,
for defendant-appellant.

Chief Judge

Jack N. Matsukawa,
Deputy Prosecuting Attorney,
County of Hawaii,
for plaintiff-appellee
(Leslie S.H. Chow,
Deputy Prosecuting Attorney,
County of Hawaii, with him on
the brief).

Associate Judge

Associate Judge