

NO. 24783

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
JOHNSON LIFTEE, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 00-1-1347)

SUMMARY DISPOSITION ORDER  
(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Johnson Liftee (Liftee) appeals from the December 5, 2001 Judgment of the Circuit Court of the First Circuit.<sup>1</sup> After a jury trial, Liftee was convicted of Terroristic Threatening in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(a) (1993),<sup>2</sup> and Kidnapping, in violation of HRS § 707-720(1)(e) (1993).<sup>3</sup>

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<sup>1</sup>The Honorable Marie N. Milks presided.

<sup>2</sup>HRS § 707-716 (1993) provides in relevant part as follows:

**§707-716 Terroristic threatening in the first degree.** (1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

(a) By threatening another person on more than one occasion for the same or a similar purpose[.]

· · ·  
(2) Terroristic threatening in the first degree is a class C felony.

<sup>3</sup>HRS § 707-720 (1993) provides in relevant part as follows:

**§707-720 Kidnapping.** (1) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

· · ·  
(e) Terrorize that person or a third person[.]

· · ·  
(2) Except as provided in subsection (3), kidnapping is a class A  
(continued...)

On appeal, Liftee contends the circuit court erred by its "outright refusal and intimidation of Defendant so that he was precluded from telling the jury about how his wife had threatened to have him jailed" because of his knowledge of her prior bad acts: specifically, that (1) he "could not talk about 'fraud' on the part of Complainant with out 'proper foundation' that is in effect that Defendant had to have 'proof' beyond his own 'assertions'"; (2) he "'stay away from any specifics, including the distributor business' - here talking about Defendant's allegations that Complainant inflated expenses on tax returns for said business"; and (3) the judge's "ruling that alleged threats to have defendant jailed for threatening to reveal these things would depend upon when made."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we affirm the Judgment of the circuit court and hold that the circuit court properly excluded Liftee's testimony concerning the alleged bad acts of the Complainant because Liftee failed to provide any evidence to the circuit court that the probative value would outweigh the potential prejudice as required by

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<sup>2/</sup>(...continued)  
felony.

(3) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial.

Hawaii Rules of Evidence Rule 403. Pursuant to the Hawai'i Supreme Court's decision in State v. Castro, 69 Haw. 633, 643, 756 P.2d 1033, 1041 (1988), it is firmly established that prior to the admittance of evidence of prior bad acts under HRE Rule 404(b), it is necessary for the circuit court to weigh the probative value and potential prejudice to determine if the evidence should be admitted. Therefore,

IT IS HEREBY ORDERED that the December 5, 2001 Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 16, 2003.

On the briefs:

James C. Beaman  
for defendant-appellant.

Chief Judge

Alexa D.M. Fujise,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for plaintiff-appellee.

Associate Judge

Associate Judge