

NO. 24795

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
PETER SMITH, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 00-1-0929(3))

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Peter Smith (Smith) appeals the December 11, 2001 Judgment of the Circuit Court of the Second Circuit¹ (circuit court), which found Smith guilty of one count of Abuse of Family [or] Household Member, pursuant to Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2000).²

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Smith's points of error as follows:

¹The Honorable Joseph E. Cardoza presided.

²HRS § 709-906 (Supp. 2000) provides, in relevant part, as follows:

§709-906 Abuse of family or household members; penalty.

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member

For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

(1) Smith argues that, in violation of his right to a fair trial by twelve unbiased jurors, the circuit court plainly erred in failing to excuse a biased juror (Subject Juror). Smith failed to use his remaining peremptory challenge when the Subject Juror's prior business relationship with the deputy prosecuting attorney arose during jury selection. Smith's counsel failed to raise any objection when the Subject Juror testified that he recognized a defense witness during a trial recess. Smith's counsel stated that he had "no problems based upon the responses" from the Subject Juror. Regardless, in both instances, the circuit court followed the steps set forth in State v. Furutani, 76 Hawai'i 172, 873 P.2d 51 (1994), in determining whether Smith was deprived of the right to a fair trial by an impartial jury. By questioning the Subject Juror in each instance, the circuit court determined that the Subject Juror's admission did not rise to the level of being substantially prejudicial. Id. at 180-81, 873 P.2d at 59-60.

(2) Smith argues that the circuit court plainly erred by admitting prior bad act evidence in violation of Hawai'i Rules of Evidence (HRE) Rules 404(b) and 403. Smith contends the evidence of his prior incidents of abuse toward the Complainant was "very prejudicial" "[f]or it tends to distract the trier of fact from the main question of what actually happened on the

particular occasion." State v. Castro, 69 Haw. 633, 643, 756 P.2d 1033, 1041 (1988) (internal quotation marks omitted).

Complainant called the police to report that she was abused by Smith on November 19, 2000. On that day, she made oral statements to the 911 operator and Officer Polanco and a written statement on a Maui Police Department Victim's Voluntary Statement form regarding an incident of violence against her by Smith.

At trial, Complainant recanted her statement to the 911 operator, claiming that it "was an improper use of words." She recharacterized the incident as mutual wrestling and denied that Smith had hit her or caused the contusion to her face. The statements involving prior incidents of abuse, including those made on the Victim's Voluntary Statement form stating that "this is not the first time he has been abusive" and "I have a complaint on him," provided an explanation for her recantation at trial. The circuit court properly found that the prior incidents of violence were relevant to show the context of her relationship with Smith as an explanation for her recantation at trial. State v. Clark, 83 Hawai'i 289, 302, 926 P.2d 194, 207 (1996).

Additionally, "the need for the evidence" was a legitimate balancing factor under HRE Rule 403, allowing the jury to consider prior acts of violence between Smith and Complainant, and was warranted to explain "the context of the relationship"

where the nature of the relationship is a possible explanation for Complainant's recantation at trial. Castro, 69 Haw. at 642-44, 756 P.2d at 1040-41. The circuit court did not err in admitting evidence of Smith's prior bad acts.

Therefore,

IT IS HEREBY ORDERED that the December 11, 2001 Judgment of the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 19, 2003.

On the briefs:

Jock M. Yamaguchi
for defendant-appellant.

Acting Chief Judge

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
County of Maui,
for plaintiff-appellee.

Associate Judge

Associate Judge