

NOT FOR PUBLICATION

NO. 25925

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ANTHONY WRIGHTSMAN, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(FC-Cr. No. 02-1-2892)

SUMMARY DISPOSITION ORDER

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

Anthony Troy Wrightsman (Defendant) appeals the May 30, 2003 judgment of the Family Court of the First Circuit (family court), the Honorable Marcia J. Waldorf, judge presiding, that convicted him, after a bench trial, of abuse of a family or household member.

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

1. Defendant first contends the family court erred in allowing into evidence multiple hearsay statements on the strength of State v. Feliciano, 2 Haw. App. 633, 636, 638 P.2d 866, 869 (1982) ("a line of authority recently adopted by our supreme court . . . permits the court to admit extrajudicial statements offered to explain an officer's conduct during the investigation procedures leading up to the arrest of

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the defendant, but not for their truth" (citations omitted)), because "there were [sic] no follow-up questioning regarding those subsequent actions [that were to be explained]." Opening Brief at 6. Defendant is wrong. The transcript of the trial reveals that testimony was elicited by the State regarding the actions taken as a result of the extrajudicial statements in question.

Defendant also argues that admission of the statements denied him his confrontation rights. We need not reach this issue, because Defendant does not on appeal elaborate or explain it beyond his mere statement of it. Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7) (2003) ("Points not argued may be deemed waived."); Bettencourt v. Bettencourt, 80 Hawai'i 225, 228-29, 909 P.2d 553, 556-57 (1995) (HRAP Rule 28(b)(7) requires cognizable argument). We merely observe that the complaining witness (CW) was not only the declarant of the extrajudicial statements cited by Defendant on appeal, but also the witness testifying at trial as to those statements, and the family court afforded defense counsel full play in cross-examining her. See Crawford v. Washington, 124 S.Ct. 1354, 1369 n.9 (2004); State v. Sua, 92 Hawai'i 61, 77, 987 P.2d 959, 975 (1999).

Finally on this point of error, Defendant argues that the Feliciano exception allows extrajudicial statements only to explain subsequent police actions, and not the subsequent actions of others. We disagree. See Brown v. Thompson, 91 Hawai'i 1,

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6 n.5, 979 P.2d 586, 591 n.5 (1999) ("The report was admissible to show the reasons for [the regulatory agency's] actions (*i.e.*, its decision to demolish the vessel) and not for the truth of the matter asserted (*i.e.*, that the vessel was worthless). As such, the report was not hearsay. See Hawai'i Rules of Evidence (HRE) Rule 801 (1993) (providing that "'[h]earsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted" (emphasis added)); cf. State v. Feliciano, 2 Haw. App. 633, 638 P.2d 866 (1982)." (Some brackets in the original.)).

2. For his other point of error on appeal, Defendant avers that the family court erred in admitting evidence of an early afternoon incident in which Defendant was caught with the CW's car keys. Because the abuse occurred earlier that day, midmorning, Defendant argues that the evidence was irrelevant. HRE Rules 401 & 402 (1993). Also, because the early afternoon incident revealed negative things about him, Defendant argues that the evidence was unduly prejudicial. HRE Rule 403 (1993). We disagree. The early afternoon incident confirmed the CW's testimony that Defendant stole her car keys during the *res gestae*. The early afternoon incident also showed that Defendant was lying when he denied possession of the CW's car keys. Ergo, the early afternoon incident was also relevant to consciousness

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of guilt. Further, because the CW testified that one of Defendant's motives that morning was to prevent her from opening her shop, a business endeavor he wanted her to close, the early afternoon incident was relevant to confirm that motive. Hence, the evidence was relevant in several respects and the family court was right to admit it. HRE Rules 401 & 402; State v. McCrory, 104 Hawai'i 203, 206, 87 P.3d 275, 278 (2004). Upon our review of the entire record of the bench trial, we also conclude that the family court did not abuse its discretion in admitting it. HRE Rule 403; State v. Faufata, 101 Hawai'i 256, 266, 66 P.3d 785, 795 (2003).

Therefore,

IT IS HEREBY ORDERED that the May 30, 2003 judgment of the family court is affirmed.

DATED: Honolulu, Hawai'i, June 29, 2005.

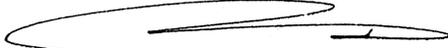
On the briefs:

Stephanie Sato,
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State of Hawai'i,
for defendant-appellant.

Ryan Yeh,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Corwin K.C. Watanabe

Acting Chief Judge


Associate Judge

Clare R. Fisher
Associate Judge