

NOT FOR PUBLICATION

NO. 26309

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CLIFFORD CABINATAN, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-CR NO. 03-1-0183)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Clifford Cabinatan (Defendant) appeals from the December 16, 2003 Judgment entered in the Family Court of the Fifth Circuit by Judge Calvin K. Murashige convicting Defendant of Abuse of Family and Household Members, Hawaii Revised Statutes § 709-906 (Supp. 2004), and sentencing him to probation for two years. Some of the special conditions of the probation sentence are: jail for fifteen days with credit for time served; successful completion of a domestic violence intervention program at Defendant's expense; payment of a \$50 Crime Victim Compensation Fee; and payment of a \$150 Probation Services Fee.

Defendant filed a notice of appeal on December 30, 2003. This appeal was assigned to this court on August 24, 2004.

Defendant is the father of four children. At the time of the September 26, 2003 jury-waived trial, the eldest son, Brenden, was 18 years of age, and the other three children were

minors, ages 17, 15, and 13. Each of them testified.

Brenden testified that on June 20, 2003, while he was at home using the phone, Defendant came into the room and told Brenden that Defendant needed to use the phone. Brenden ended his phone conversation. When Brenden erased the caller ID, Defendant slapped the phone out of Brenden's hand, and the phone "whacked [Brenden's] face a little bit" on the "nose part." Defendant asked Brenden why he erased the caller ID. When Brenden responded that he was going to call the police and started walking away, Defendant threw the phone at Brenden with a lot of force. The phone hit Brenden on his back, causing large impact welts.

Upon cross-examination by defense counsel, Brenden testified, in relevant part, as follows:

Q. Why did you erase the caller ID?

A. Because --

THE WITNESS: -- because he didn't want that person calling there.

BY [DEFENSE COUNSEL]:

Q. And your father didn't want that person calling there because he heard you talking about drugs, that's correct; isn't it?

A. No.

Q. Did your father say anything about drugs that day prior to -- before you left the house?

A. Yeah, he told me I was a drug addict.

Q. And your telephone conversation was or was not about drugs?

A. It wasn't.

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Q. Did you use the word drugs at all in the conversation with the person?

A. No.

Defendant testified, in relevant part, as follows:

Q. . . . Did [Brenden] tell you he was going to call the cops that day?

A. No, when -- when I said it -- he doesn't live here anymore because I know he was doing -- doing drugs --

[PROSECUTOR]: Objection. Non-responsive.

THE WITNESS: -- I said you have to leave. That's when he said he was going to call the police on me.

. . . .

BY [DEFENSE COUNSEL]:

Q. You said that he got the phone back. You took it out of his hand?

A. Yeah, he got the phone back.

Q. And then what did he do with the phone?

A. He was still trying to erase more stuff on the caller ID.

Q. And why did that upset you?

A. Yeah, I went after him.

Q. Why did -- why did it upset you that he was erasing--

A. Yeah, because I knew --

Q. -- things from the caller ID?

A. -- because I knew he was talking to someone about drugs. I heard drugs mentioned in his conversation on the phone. So, I wanted to see who he was calling, so I could call that person to protect my family.

Q. And so, he took the phone back from you?

A. Yeah, . . . --

Q. Did he -- did he leave with the phone --

A. Yes.

. . . .

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A. I went after him again. He went -- and he started erasing again.

Q. And where did he go with the phone?

A. He was running backwards, and he ended up in the chain link fence. He bounced off the chain link fence.

Defendant's 17-year-old daughter's testimony was generally consistent with Brenden's testimony. The testimonies from Defendant's 15- and 13-year-old sons were generally consistent with Defendant's testimony.

In this appeal, Defendant challenges numerous evidentiary rulings made by the court. In summary, Defendant contends that his "defense was that [Brenden] was lying and Defendant was precluded from pointing it out as to why." Defendant argues, in relevant part, as follows:

Part of [Defendant's] defense was that Brendan [sic] was lying about [Defendant] throwing a telephone receiver at him. That the reason Brendan [sic] would lie at trial is that [Defendant] did not want him to do "ice" and Brendan's [sic] calling the police was a way to get retribution against [Defendant] - i.e., motive and bias.

. . . .

While a witness may not be cross-examined as to his involvement with drugs solely to show that he is unreliable or lacks veracity (State v. Sugimoto, 62 Haw. 259, 614 P.2d 386 (1980)) Defendant wanted to present evidence of bias - the trial court denied that right.

The exclusion of competent testimony designed to impeach the credibility of a material witness for the State is error that infringes upon a constitutional right of the accused and as such is presumptively prejudicial. State v. Pokini, 57 Haw. 26, [1548 P.2d 1402, cert. denied, 429 U.S. 963 (1976)].

Defendant's assertion that he was precluded from pointing out Brenden's motivation for lying is contradicted by the record, including the testimony quoted above.

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Similarly, Defendant's contention that the evidence is insufficient to convict him of Abuse of Family and Household Members is also contradicted by the record.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the December 16, 2003 Judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, March 8, 2005.

On the briefs:

John H. Murphy,
for Defendant-Appellant

Chief Judge

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai,
for Plaintiff-Appellee

Associate Judge

Associate Judge