

NOT FOR PUBLICATION

NO. 26511

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CARL HOFF, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 03-1-1231)

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SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Carl Hoff (Hoff) appeals from the Amended Judgment filed on April 22, 2004, in the Circuit Court of the First Circuit (the circuit court).¹ Hoff was charged by indictment with one count of Sexual Assault in the First Degree in violation of Hawaii Revised Statutes (HRS) § 707-730(1)(b) (Supp. 2005).² The complaining witness (CW) was eight years old at the time of the alleged offense. After a jury trial, Hoff was found guilty as charged. The circuit court sentenced Hoff to twenty years' imprisonment.

¹ The Honorable Karen S. S. Ahn presided.

² Hawaii Revised Statutes (HRS) § 707-730(1)(b) (Supp. 2005) provides as follows:

§ 707-730 Sexual assault in the first degree. (1) A person commits the offense of sexual assault in the first degree if:

- (b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old[.]

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After a careful review of the record and the briefs submitted by the parties, we resolve the issues Hoff raises on appeal as follows:

I.

During her rebuttal closing argument, the Deputy Prosecuting Attorney (DPA) argued that in contrast with the prosecution's witnesses, Hoff was the "only person" with an interest in the outcome of the case and a motive to lie. Hoff argues that the DPA's remarks infringed on Hoff's right to testify in his own defense at trial. We disagree. Once Hoff took the stand, his credibility was subject to attack, including attacks based on any bias, interest, or motive he had in testifying. State v. Apilando, 79 Hawai'i 128, 142, 900 P.2d 135, 149 (1995). We conclude that the DPA's remarks about Hoff's interest in the outcome of the case and motive to lie were not improper. Id. (holding that the prosecutor's comment that, "because [the defendant] had the highest stake in the outcome of the case, he had the greatest motive to lie," was not improper).

II.

The circuit court permitted the CW's mother to testify about behavioral changes she noticed in the CW immediately after the alleged sexual assault. These included the CW's waking up at night crying and screaming for several days. We reject Hoff's argument that the testimony of the CW's mother about the CW's behavioral changes was inadmissible absent expert testimony to explain the connection between the CW's behavioral changes and

the alleged sexual assault.

We conclude that the potential for a traumatic event to cause changes in a person's behavior falls into the category of common life experiences. Accordingly, the relevance and admissibility of the evidence regarding the CW's behavioral changes did not depend on testimony from an expert. See Id. at 141, 148 (concluding that a police officer's observations of the demeanor and appearance of a five-year-old complainant shortly after the alleged sexual assault "were relevant and served as circumstantial evidence regarding whether [the complainant's] behavior was consistent with a child her age who had experienced a recent upsetting event.") The evidence of the CW's behavioral changes was not so far removed from the jury's common experiences and realm of understanding that expert testimony was required for the evidence to be admissible.

We also reject Hoff's related claim that it was impermissible for the DPA, in closing argument, to argue that the CW's behavioral changes provided corroboration that the sexual assault had occurred. A prosecutor is permitted to draw reasonable inferences from the evidence and is given wide latitude to discuss the evidence during closing argument. State

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v. Clark, 83 Hawai'i 289, 304, 926 P.2d 194, 209 (1996). The inference argued by the DPA was reasonable.

IT IS HEREBY ORDERED that the Amended Judgment filed on April 22, 2004, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 15, 2006.

On the briefs:

Karen T. Nakasone,
Deputy Public Defender,
for Defendant-Appellant.

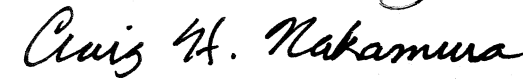
Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge