

## NOT FOR PUBLICATION

NO. 26963

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
LUCIANNA HUNG, Defendant-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2006 MAY 11 PH12:15

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(FC-CR. NO. 04-1-1575)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Lucianna Hung (Hung) appeals from the Judgment of Conviction filed on October 20, 2004 in the Family Court of the First Circuit (family court).<sup>1/</sup> On June 21, 2004 the State, via Amended Complaint, charged Hung with Abuse of Family and Household Members, specifically abuse of her then four-year-old son (the Minor), in violation of Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2005).

On appeal, Hung argues that (1) the family court erroneously found the Minor, who was five at the time of trial, competent to testify in violation of Hawaii Rules of Evidence (HRE) Rule 603.1; (2) there was insufficient evidence to convict Hung; (3) the family court abused its discretion in sentencing Hung to a thirty-day term of imprisonment; and (4) the deputy prosecuting attorney committed acts of misconduct during direct and cross-examination and closing and rebuttal arguments, thereby violating Hung's rights to due process and a fair trial.

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<sup>1/</sup> The Honorable Patrick W. Border presided.

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 as raised by the parties, we conclude:

(1) The family court did not err in finding that the Minor was competent to testify under HRE Rule 603.1. HRE Rule 601; Republic of Hawaii v. Ah Wong, 10 Haw. 524 (1896); Territory of Hawaii v. Martin, 39 Haw. 100 (1951); State v. Kelekolio, 74 Haw. 479, 527, 849 P.2d 58, 80 (1993); State v. Dameg, 51 Haw. 308, 309, 459 P.2d 193, 194 (1969).

(2) There was sufficient evidence to establish that Hung physically abused the Minor, in violation of HRS § 709-906. HRS § 702-204 (1993); HRS § 702-206(3) (1993); State v. Grace, 107 Hawai'i 133, 143-44, 111 P.3d 28, 38-39 (App. 2005); State v. Tomas, 84 Hawai'i 253, 257, 933 P.2d 90, 94 (App. 1997), overruled in part on other grounds by State v. Gonzales, 91 Hawai'i 446, 984 P.2d 1272 (App. 1999); State v. Eastman, 81 Hawai'i 131, 139-40, 913 P.2d 57, 65-66 (1996).

(3) The family court did not err in convicting Hung of Abuse of Family and Household Member because the State proved beyond a reasonable doubt that Hung used unreasonable force to discipline the Minor. HRS § 703-309(1) (1993); State v. Crouser, 81 Hawai'i 5, 10-11, 911 P.2d 725, 730-31 (1996); State v. Kaimimoku, 9 Haw. App. 345, 349-50, 841 P.2d 1076, 1079 (1992).

(4) The family court did not abuse its discretion in sentencing Hung. HRS § 706-606 (1993); HRS § 706-663 (1993);

State v. White, 110 Hawai'i 79, 82-83, 129 P.3d 1107, 1110-11 (2006).

(5) The deputy prosecuting attorney's conduct was proper and did not deprive Hung of her rights to due process and a fair trial. State v. Carvalho, 106 Hawai'i 13, 16 n.7, 100 P.3d 607, 610 n.7 (App. 2004); State v. Pacheco, 96 Hawai'i 83, 95, 26 P.3d 572, 584 (2001); State v. Rogan, 91 Hawai'i 405, 412-15, 984 P.2d 1231, 1238-41 (1999); State v. Knight, 80 Hawai'i 318, 327, 909 P.2d 1133, 1142 (1996).


IT IS HEREBY ORDERED that the Judgment of Conviction entered on October 20, 2004 in the Family Court of the First Circuit is affirmed.

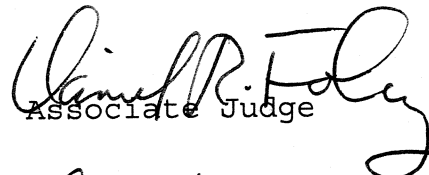
DATED: Honolulu, Hawai'i, May 11, 2006.

On the briefs:

Taryn R. Tomasa,  
Deputy Public Defender,  
for Defendant-Appellant.

Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Acting Chief Judge

  
Associate Judge

  
Associate Judge