

NO. 26842

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
BRUCE Q. LEE, Defendant-Appellant

K. HAMAKAIDO
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APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-CR. NO. 03-1-0277)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Nakamura, and Fujise, JJ.)

Defendant-Appellant Bruce Q. Lee (Lee) appeals from the Judgment filed on August 27, 2004, in the Family Court of the Third Circuit (family court).¹ After a bench trial, the family court found Lee guilty as charged of abuse of a family or household member, in violation of Hawaii Revised Statutes (HRS) Section 709-906 (Supp. 2002).² The family court sentenced Lee to a term of imprisonment of 365 days, a fine of \$500, and an assessment of \$50 payable to the Crime Victim Compensation Fund.

¹ The Honorable Stuart Haruo Oda presided.

² At the time of the charged offense, Hawaii Revised Statutes (HRS) Section 709-906 (Supp. 2002) provided, in relevant part, as follows:

(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.

I.

The complaining witness (CW), who was fourteen or fifteen years old at the time of the charged offense, was Lee's stepdaughter. The CW regarded Lee as her father and referred to him as "Dad." The CW lived at her grandmother's house along with Lee, the CW's mother, and the CW's two brothers and one sister. At about 8:30 in the morning on May 1, 2003, Lee and the CW's mother got into an argument. The children had missed the bus and were late for school. Lee told the CW to get into his car, but the CW resisted because she knew that Lee drove recklessly when angry and she feared for her safety.

At trial, the CW reluctantly testified on that while Lee was attempting to force her into the car, he hit her in the back, head, ribs, and stomach with his hands. The CW was bleeding from injuries to her forehead, nose, and lip. The CW testified that the injuries to her nose and lip were attributable to her mother's "accidentally open[ing] the [car] door on my nose and lip." On cross-examination by defense counsel, the CW stated that Lee "shoved" rather than hit her while trying to get her into the car.

At about 8:55 a.m., police officer Michael A. Decoito (Officer Decoito) went to Lee's residence in response to a domestic disturbance call. When he arrived, Officer Decoito saw Lee attempting to close the car door on the CW who was seated in the front passenger seat. Officer Decoito testified that the CW was "kind of in a state of shock," that the front part of her

t-shirt was soaked with blood, that she was bleeding profusely from her forehead, nose, and mouth, and that she spit out blood when trying to talk. The CW was "crying and very hysterical" and appeared afraid to answer questions. Officer Decoito described the scene as "mass confusion" with family members of all ages yelling and running around.

Officer Decoito called for a rescue vehicle because of the CW's injuries. When the rescue vehicle arrived a short time later, the CW had "settled down a little bit" after talking to her grandmother. While lying in the rescue vehicle, the CW told Officer Decoito that she had been beaten by Lee, that Lee had kicked her in the ribs, and that Lee had shut the door on her while she was trying to get out of the car, cutting her forehead. Officer Decoito took several Polaroid photographs of the CW covered in blood at the scene of the incident.

At about 10:00 a.m., police officer Iris McGuire (Officer McGuire) met the CW at the emergency room of the Hilo Medical Center. The CW seemed frantic and was crying. The CW was rolled up almost in a fetal position, her hands clung tightly to the gurney, and she refused to open her eyes when speaking to Officer McGuire. The CW told Officer McGuire that Lee had "struck [the CW] numerous times in the face and body[]" and had hit her head with the car door.

Detective Ann Mehia (Detective Mehia) also testified that at about 9:55 a.m. she was assigned to contact the CW at the Hilo Hospital emergency room. The CW appeared very upset, was

emotional, and was crying. The CW told Detective Mehia that Lee became upset and started hitting the CW when she refused to get into the car. The CW further stated that Lee struck her in the face and head, pushed her against the car, hit her in the ribs, and punched her in the nose.

The CW's mother (Mother) testified for the defense. Mother testified that she opened the car door without realizing that the CW was behind her. Mother stated that she assumed that either the bracelets on her arm or the car door must have hit the CW because when Mother turned around, the CW's nose was bleeding. Mother admitted to having called the police more than once in the past to report that Lee had abused Mother, but stated that she had lied and that none of those allegations were true.

Lee testified that he attempted to push or shove the CW into the car -- "I push like her for a minute in the car like that, shove her like this to get her in." Lee stated that he thought Mother's bracelet hit the CW when Mother opened the door. When he turned after Mother opened the door, Lee saw that the CW was bleeding from the face. Lee denied striking the CW or causing the injuries to her face.

II.

On appeal, Lee argues that: 1) the family court erred in overruling his hearsay objection and admitting as an excited utterance the CW's statement to Officer Decoito at the scene that Lee had caused the CW's injuries; 2) the family court committed plain error in admitting statements made by the CW to Officer

McGuire and Detective Mehia at the emergency room because those statements were hearsay and did not qualify as excited utterances; 3) the family court erred in admitting evidence regarding Lee's lack of custody over and visitation rights with his five biological children and the removal of Mother's children from her custody because such evidence constituted unfairly prejudicial character evidence; and 4) there was insufficient evidence to support Lee's conviction.

After a careful review of the record and the briefs submitted by the parties, we affirm the Judgment. We resolve Lee's arguments on appeal as follows:

1. We conclude that the family court did not err in admitting as an excited utterance the CW's statement to Officer Decoito at the scene that Lee had caused the CW's injuries. See Hawaii Rules of Evidence (HRE) Rule 803(b)(2) (1993). The CW was still "under the stress of excitement caused by the [startling] event or condition" when she spoke to Officer Decoito. State v. Moore, 82 Hawai'i 202, 218, 921 P.2d 122, 138 (1996).

When Officer Decoito arrived at Lee's residence, Lee was still in the process of trying to force the CW into the car. The CW was crying and very hysterical, her shirt was soaked in blood flowing from her forehead, nose, and mouth, and she was spitting out blood. Although the CW "settled down a little bit" before the rescue vehicle arrived, the evidence establishes that she remained under the stress of excitement caused by the traumatic events that had just unfolded when she spoke to Officer

Decoito in the rescue vehicle before being taken to the emergency room. The CW had just been brutally beaten by her father figure, was in pain, and was covered with blood. Indeed, even after she arrived at the emergency room, the CW was frantic, upset, crying, and very emotional, was curled in a fetal position, and refused to open her eyes. This demonstrates that the stress of excitement caused by the traumatic events persisted with the CW beyond the time she spoke to Officer Decoito. Accordingly, the CW's statement to Officer Decoito was admissible as an excited utterance. See State v. Clark, 83 Hawai'i 289, 297-98, 926 P.2d 194, 202-03 (1996); Moore, 82 Hawai'i at 218-22, 921 P.2d at 138-42.

2. The family court did not commit plain error in admitting the CW's statements to Officer McGuire and Detective Mehia at the emergency room. Lee did not object to the admission of these statements and thus the family court properly considered them as competent evidence. State v. Naeole, 62 Haw. 563, 570-71, 617 P.2d 820, 826 (1980); State v. Wallace, 80 Hawai'i 382, 410, 910 P.2d 695, 723 (1996). We decline to overturn Lee's conviction based on alleged errors that Lee failed to preserve with objections at trial.

In any event, we conclude that any alleged error in admitting the CW's emergency room statements was harmless beyond a reasonable doubt. The evidence regarding the CW's emergency room statements was cumulative of the CW's own trial testimony and her statement to Officer Decoito. Thus, any error in

admitting the CW's emergency room statements did not affect Lee's substantial rights. See Clark, 83 Hawai'i at 298, 926 P.2d at 203; State v. Crisostomo, 94 Hawai'i 282, 290, 12 P.3d 873, 881 (2000); Hawai'i Rules of Penal Procedure (HRPP) Rule 52.

3. The family court did not err in admitting evidence regarding Lee's lack of custody over and visitation rights with his five biological children. The prosecutor's cross-examination of Lee on these matters constituted proper impeachment under HRE Rule 609.1 (1993), which permits a party to attack the credibility of a witness "by evidence of bias, interest, or motive." Evidence that Lee had already lost custody over and the right to visit with his biological children was relevant to establishing a motive for him to lie about abusing the CW. Lee's loss of custody over and visitation rights with his biological children served to show that he was aware that a conviction on the abuse charge could result in his and Mother's permanently losing Mother's children.

The prosecutor's cross-examination of Mother regarding the removal of the CW and Mother's other children from Mother's custody as a result of the abuse charge against Lee was also permissible impeachment under HRE Rule 609.1. The family court did not commit plain error in allowing such cross-examination. Evidence that Mother had lost custody of her children as a result of the abuse charge against Lee served to show that Mother had a motive to testify in a manner that would support Lee's claim that the charge was unfounded. The prosecutor's question as to

whether Mother would regain custody of her children as long as she remained with Lee was likewise permissible since it was directed at revealing Mother's strong allegiance to Lee and her bias in his favor.

Moreover, this was a bench trial. In a bench trial, we presume that the judge was not influenced by incompetent evidence and only considered admitted evidence for permissible purposes. State v. Antone, 62 Haw. 346, 353, 615 P.2d 101, 107 (1980); State v. Lioen, 106 Hawai'i 123, 133, 102 P.3d 367, 377 (App. 2004). We therefore reject Lee's claim that he was unfairly prejudiced by the evidence regarding his and Mother's loss of custody over their respective children. The trial judge was fully capable of considering the evidence for its proper impeachment purposes and disregarding any improper, unfairly prejudicial inferences.

4. We conclude that there was sufficient evidence to support Lee's conviction. The CW testified that Lee hit her in the back, head, ribs, and stomach. When Officer Decoito arrived at the scene, Lee's attempt to force the CW into the car was still in progress and the CW was bleeding profusely from multiple injuries to her face. Photographs taken at the scene that showed the CW's bloody face and shirt were admitted in evidence. The CW told Officer Decoito that she had been beaten by Lee, that Lee had kicked her in the ribs, and that Lee had cut her forehead when shutting the door on her. As the family court indicated in rendering its guilty verdict, it is difficult to imagine how the

multiple injuries sustained by the CW could have been caused by Mother's accidentally opening the car door on the CW or hitting the CW with Mother's bracelets as the defense contended. There was ample and substantial evidence to support Lee's conviction. See State v. Ildefonso, 72 Haw. 573, 576-77, 827 P.2d 648, 651 (1992).

III.

IT IS HEREBY ORDERED that the Judgment filed on August 27, 2004, in the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 25, 2007.

On the briefs:

J. Grant Giventer
Deputy Public Defender
for Defendant-Appellant

Mary Ann J. Hollocker
Deputy Prosecuting Attorney
County of Hawai'i
for Plaintiff-Appellee



Presiding Judge



Associate Judge



Associate Judge