

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27114

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
SEPETI LALAHU, Defendant-Appellant

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STATE OF HAWAI'I

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 04-1-2220)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, Chief Judge, Foley, and Nakamura, JJ.)

Defendant-Appellant Sepeti Lalahi (Lalahi) appeals from the Judgment filed on January 18, 2005, in the Family Court of the First Circuit (family court).¹ Plaintiff-Appellee State of Hawai'i (the State) charged Lalahi by complaint with abuse of a family or household member, in violation of Hawaii Revised Statutes (HRS) Section 709-906 (Supp. 2002).² After a jury trial, Lalahi was found guilty as charged. The family court sentenced Lalahi to two years of probation, subject to a condition that he serve a sixty-day term of imprisonment.

I.

The complaining witness (CW) was Lalahi's live-in girlfriend. In the morning on October 24, 2004, the CW and Lalahi were involved in a heated argument. Lalahi allegedly hit

¹ The Honorable Patrick W. Border 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 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.

the CW and she yelled for someone to call the police. When the police arrived about 30 to 45 minutes later, the CW prepared and signed the following written statement:

On Oct 24, 2004 [Lalahi] and I were arguing about [Lalahi] not being able to drink on Sat due to his probation. he got upset and started to break things in my room and I tried to stop him because he threw the Rabbit while he was in the cage and he spit in my face and punched the back of my head and I tried to block the second punch and he hit my arm, and I opened the door and he hit my head again and started to argue with my son. I didn't give him permission to break anything or hit me. I am willing to prosecute.

At trial, the CW testified that Lalahi only hit her after she threw a broken game controller with sharp edges at him, which was information she had not included in her written statement. The CW also testified that Lalahi only hit her with one punch, which she blocked, rather than with the three punches she reported in her written statement. In response, the Deputy Prosecuting Attorney (DPA) questioned the CW about the statements she made in her written statement.

II.

On appeal, Lalahi asserts that the family court abused its discretion by permitting the DPA to question the CW about statements she made in her written statement. In particular, Lalahi contends that the CW's written statement was consistent with the CW's trial testimony. Lalahi therefore claims that the DPA's questions to the CW about the written statement elicited inadmissible hearsay that was unfairly used to bolster the CW's credibility. Lalahi also argues that the family court plainly erred in allowing the DPA to elicit testimony from the CW that Lalahi had thrown a caged rabbit and in allowing the DPA to reconfirm that testimony through questioning the CW about her written statement.

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

1. We conclude that the family court did not err in permitting the DPA to question the CW about the written statement

the CW gave to the police. Material aspects of the CW's trial testimony were inconsistent with her written statement. In particular, the CW testified at trial that Lalahi only hit her once, whereas she described Lalahi hitting her with three punches in her written statement. In addition, the CW's trial testimony supported Lalahi's claim of self-defense by depicting the CW as the initial aggressor in the altercation due to her throwing a game controller at Lalahi -- something the CW did not report in her written statement. Although the CW did not completely recant her allegations of abuse, her trial testimony minimized the severity of Lalahi's actions when compared to her written statement and thus was inconsistent with the written statement. See Udemba v. Nicoli, 237 F.3d 8, 18 (1st Cir. 2001); State v. Dickenson, 740 P.2d 312, 317 (Wash. App. Ct. 1987).

Under these circumstances, the DPA was entitled to question the CW about her written statement to impeach her trial testimony. See Hawaii Rules of Evidence (HRE) Rule 613 (1993). Indeed, although the family court denied the DPA's request to admit the written statement, the record shows that the DPA had laid a sufficient foundation for the admission of the inconsistent portions of the written statement as substantive evidence pursuant to HRE Rule 802.1(1) (1993). To the extent that the DPA questioned the CW about the consistent portions of her written statement, that questioning was permissible to support the DPA's impeachment. Such questioning revealed that the areas in which the CW's trial testimony deviated from her written statement involved the crucial details relating to Lalahi's physical assault on her.

2. We conclude that the family court did not plainly err in admitting evidence that Lalahi threw a caged rabbit in the midst of his argument with the CW. Such evidence was admissible as part of the *res gestae* of the charged abuse offense. As this

court explained in State v. Fetelee, 114 Hawai'i 151, 157 P.3d 590 (App. 2007):

Evidence of other offenses or acts that is not extrinsic to the offense charged, but rather, is part of the criminal episode or transaction with which the defendant is charged, is admissible to provide the fact-finder with a full and complete understanding of the events surrounding the crime and the context in which the charged crime occurred. Such evidence is generally linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury. This type of evidence is considered part of the *res gestae* of the offense and it is not subject to the general rule that excludes evidence of prior criminality.

Id. at 159, 157 P.3d at 598 (quoting People v. Quintana, 882 P.2d 1366, 1373 (Colo. 1994)) (emphasis added, quotation marks omitted).

Evidence that Lalahi threw a caged rabbit was relevant to show the extent of his anger and thus his intent in and motive for assaulting the CW. It also was relevant to controvert his claim of self-defense. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.

We also reject Lalahi's argument that it was unduly prejudicial to allow the DPA to reconfirm the rabbit-throwing incident through questioning the CW about her written statement. Prior to being questioned about her written statement, the CW had answered "yes" in response to the DPA's question about whether Lalahi has thrown a rabbit or rabbit cage. The CW, however, then characterized what Lalahi did as "bouncing" the rabbit cage on the table. The DPA was entitled to impeach the CW's "bouncing" characterization by showing that the CW wrote in her written statement that Lalahi "threw" the caged rabbit. In any event, the repetition of the rabbit-throwing evidence was harmless because it was merely cumulative of the CW's previous admissible testimony, see State v. Clark, 83 Hawai'i 289, 298, 926 P.2d 194, 203 (1996); State v. Crisostomo, 94 Hawai'i 282, 290, 12 P.3d 873, 881 (2000), and because Lalahi subsequently admitted during his testimony that he had picked up the rabbit cage and slammed it down to get the CW's attention.

III.

IT IS HEREBY ORDERED that the January 18, 2005,
Judgment of the family court is affirmed.

DATED: Honolulu, Hawai'i, June 29, 2007.

On the briefs:

Michele Muraoka
Deputy Public Defender
for Defendant-Appellant

Ryan Yeh
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee



Chief Judge



Associate Judge



Associate Judge