

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27174

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
BILLY JOE McNEAL, Defendant-Appellant

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

2007 DEC 12 AM 10:20

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CRIMINAL NO. 04-1-2266)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Billy Joe McNeal (McNeal) appeals from the Judgment of Conviction and Sentence filed on March 7, 2005 in the Family Court of the First Circuit^{1/} (family court). A jury convicted McNeal of Abuse of Family and Household Members, in violation of Hawaii Revised Statute (HRS) § 709-906 (Supp. 2005).^{2/}

On appeal, McNeal contends the family court (1) erred by precluding evidence of Complainant's prior acts of violence, which were proffered to show that Complainant was the first aggressor and to show the reasonableness of McNeal's apprehension of immediate danger; (2) erred by precluding evidence that was relevant to McNeal's self-defense claim; and (3) abused its discretion in excluding evidence that Complainant had previously attacked McNeal on grounds that the probative value of the

^{1/} The Honorable Reynaldo D. Gaulty presided.

^{2/} Hawaii Revised Statute (HRS) § 709-906 (Supp. 2005) provides in pertinent part:

§709-906 Abuse of family or household members; penalty.

(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.

evidence was substantially outweighed by the danger of unfair prejudice.

After a careful review of the record and briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised, we hold:

(1) The family court did not err in precluding evidence of Complainant's prior acts of violence proffered to show that Complainant was the first aggressor or to show the reasonableness of McNeal's apprehension of immediate danger. State v. Adam, 97 Hawai'i 413, 418, 38 P.3d 581, 586 (App. 2001). The evidence was undisputed that McNeal was the initial aggressor.

(2) The family court did not preclude evidence that was relevant to self defense because McNeal was the initial aggressor. Id.

(3) The family court did not abuse its discretion by excluding evidence of Complainant's prior acts of violence on grounds that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. Walsh v. Chan, 80 Hawai'i 212, 215, 908 P.2d 1198, 1201 (1995).

Therefore,

The Judgment of Conviction and Sentence filed on March 7, 2005 in the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 12, 2007.

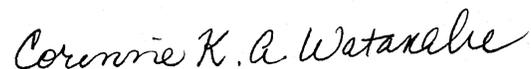
On the briefs:

Carmel A. Kwock,
Deputy Public Defender,
for Defendant-Appellant.

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



Chief Judge



Associate Judge



Associate Judge