

NO. 27417

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MARIANO MENDOZA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 05-1-0269(4))

EM RIMANCO
CLERK APPELLATE COURTS
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Foley and Nakamura, JJ.)

Mariano Mendoza, aka Sonny (Defendant), appeals the June 22, 2005 judgment of the Family Court of the Second Circuit (family court),¹ as amended on July 22, 2005. The judgment convicted Defendant, after a bench trial, of abuse of a family or household member.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we dispose of Defendant's points of error on appeal as follows:

1. Defendant contends the family court erred in finding Defendant guilty. We disagree. Given the prerogative of the finder of fact to determine the credibility of the witnesses and the weight of the evidence, State v. Taliferro, 77 Hawai'i 196, 201, 881 P.2d 1264, 1269 (App. 1994), and to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence, State v. Eastman, 81 Hawai'i

¹ The Honorable Richard T. Bissen, Jr. presided.

131, 135, 913 P.2d 57, 61 (1996), there was substantial evidence to support the judgment of the family court. Id.

2. Defendant contends the family court erred when it permitted the prosecutor to elicit on redirect examination the complaining witness's (the CW) oral statement to the police that she had been slapped so hard she fell down. Assuming, *arguendo*, that the statement in question was inadmissible hearsay, its admission was harmless beyond a reasonable doubt. State v. Holbron, 80 Hawai'i 27, 32, 904 P.2d 912, 917 (1995).

3. Defendant contends the family court had already prejudged the credibility of the CW, given its conduct of prior protective order proceedings. We disagree. Defendant has failed to rebut the presumption that the family court did not consider incompetent evidence in conceiving its judgment in the criminal case. State v. Montgomery, 103 Hawai'i 373, 383, 82 P.3d 818, 828 (App. 2003).

Therefore,

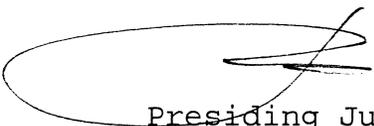
IT IS HEREBY ORDERED that the June 22, 2005 judgment of the family court, as amended on July 22, 2005, is affirmed.

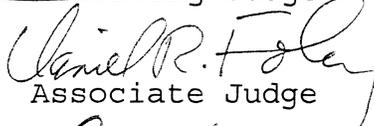
DATED: Honolulu, Hawai'i, January 16, 2007.

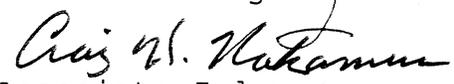
On the briefs:

Steven Booth Songstad,
for Defendant-Appellant.

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Presiding Judge


Associate Judge


Associate Judge