

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27588

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
TAIRENI ENAENA, aka T, Defendant-Appellant, and
CORY NELSON, Defendant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-1872)

SUMMARY DISPOSITION ORDER

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

Taireni Enaena (Enaena) timely appeals from the Judgment of Conviction and Sentence entered on October 11, 2005, in the Circuit Court of the First Circuit (circuit court).¹ A jury convicted Enaena of Robbery in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 708-841(1)(a) (1993 Repl.). Enaena was sentenced to a ten-year term of imprisonment with a mandatory minimum term of three years and four months because of her status as a repeat offender.

Enaena raises a single point of error on appeal:

The lower court erred in prohibiting Enaena from attacking Chow's credibility by evidence of his bias, interest or motive, in violation of [Hawaii Rules of Evidence (HRE)] Rule 609.1 and Enaena's constitutional rights to Confrontation and Due Process under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 5 and 14 of the Hawaii State Constitution.

Specifically, Enaena argues that she should have been allowed to cross-examine complaining witness Clarence Chow (Chow) about an incident that allegedly occurred after Enaena had been charged with the robbery, in which Chow approached Enaena while she was walking to work and told her "'T', you going down!"

After a careful review of the record and the briefs submitted by both parties, and having given due consideration to

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The Honorable Virginia Lea Crandall presided.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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the arguments advanced and the issues as raised, we resolve Enaena's point of error as follows:

1. Although the proposed cross-examination had extremely limited probative value, Enaena should have been allowed to pursue it. Chow's alleged statement appeared to reflect Chow's belief that the criminal case against Enaena was strong. The fact that Chow allegedly went out of his way to express that sentiment to her might be viewed as reflecting some unusual bias on his part, and might also be viewed as inconsistent with his testimony that the robbery was a highly traumatic event. HRE Rule 609.1.

Moreover, the proposed cross-examination was permissible under HRE Rule 403 since any potential prejudice did not outweigh the probative value of the testimony. See State v. Silva, 67 Haw. 581, 586, 698 P.2d 293, 297 (1985); State v. Balisbisana, 83 Hawai'i 109, 116, 924 P.2d 1215, 1222 (1996). The questions about this event would have been straightforward, and we see no basis for concluding that the jury would likely have been misled by the inquiry or inflamed by Chow's responses. Thus, it was an abuse of discretion not to allow it.

2. The trial court's error in precluding the proposed cross-examination was harmless beyond a reasonable doubt. State v. Birano, 109 Hawai'i 314, 325, 126 P.3d 357, 368 (2006). We base this conclusion on several factors. First, there was substantial evidence that corroborated important aspects of Chow's testimony and that otherwise supported the prosecution's theory that Enaena was an accomplice to the robbery of Chow. Id.; cf. Balisbisana, 83 Hawai'i at 117, 924 P.2d at 1223. This evidence included a disinterested witness's observations of a woman arguing with Chow, Chow being dragged from his car and beaten by a man, and the woman and man then fleeing the scene. It also included testimony by that witness, a police officer and a detective that linked Enaena and a man whom Chow identified as

his assailant to a distinctive maroon car that was observed at the scene of the robbery, as well as testimony by a police officer that Chow's shirt was torn when the officer interviewed him shortly after the incident. Thus, this is not a case in which the prosecution rested entirely on the testimony of the witness who was the subject of the proposed impeachment. Cf. id.

Second, the circuit court allowed Enaena considerable latitude in cross-examining Chow, including questions relating to whether Chow was biased towards Enaena because he owed money to Enaena or her boyfriend Lamont. In addition to extensive cross-examination about inconsistencies in his statements, Chow was asked whether he owed money to Enaena or Lamont, whether he had a conflict with Lamont, whether his reasons for stopping to talk to Enaena were plausible, what his "real" reasons for stopping were, and whether he had "staged" having money in his front pocket when he testified in court. Defense counsel then argued in closing that Chow was either mistaken or lying, and wasn't telling the jury the whole story. Given these circumstances, we conclude that the proposed cross-examination was cumulative.

Third, as noted above, the testimony had extremely limited probative value. This is not a case in which, for example, the circuit court precluded testimony about some other altercation or dispute that might have given the witness a motive to lie. Cf. id. (witness testifying against the defendant had recently been convicted of a crime in which the defendant had been the complaining witness).

In sum, we conclude that the proposed cross-examination would not have changed the outcome of the trial had it been permitted. Although the circuit court should have allowed the proposed cross-examination, that error was harmless beyond a reasonable doubt.

Therefore,

The Judgment of Conviction and Sentence entered on

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October 11, 2005, in the Circuit Court of the First Circuit is hereby affirmed.

DATED: Honolulu, Hawai'i, July 30, 2007.

On the briefs:

Phyllis J. Hironaka,
Deputy Public Defender,
for Defendant-Appellant.

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

M. E. Redtenwald
Chief Judge

Daniel R. Foley
Associate Judge

Craig W. Nakamura
Associate Judge