

NO. 27688

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROOSEVELT FORD, JR., Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 05-1-2068)

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2007 APR 11 AM 7:48

FILED

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., and Lim, J., with Nakamura, J., concurring separately)

Roosevelt Ford, Jr. (Defendant) appeals the November 28, 2005 judgment of the Family Court of the First Circuit (family court)¹ that convicted him of the first of two counts 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. The family court did not deny Defendant his constitutional right to present a defense when it barred him from calling a complaining witness (the CW) to have her invoke the Fifth Amendment in front of the jury. Hawaii Rules of Evidence (HRE) Rule 513 (1993); State v. Sale, 110 Hawai'i 386, 393-94, 133 P.3d 815, 822-23 (App. 2006).

2. The family court did not err in rejecting

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The Honorable Reynaldo D. Gaulty presided.

Defendant's proposed jury instruction, which would have told the jury that the CW did not testify because she had taken the Fifth Amendment. HRE Rule 513; Sale, 110 Hawai'i at 393-94, 133 P.3d at 822-23.

3. The family court did not abuse its discretion in disallowing hearsay testimony from Defendant's investigator because the proffered testimony lacked the necessary circumstantial indicia of trustworthiness. HRE Rule 804(b)(3) (1993); HRE Rule 804(b)(8) (Supp. 2006).

4. Assuming, *arguendo*, that the family court erred in allowing a police officer to express his opinion as to the cause of a cut lip, the error was harmless beyond a reasonable doubt. State v. Holbron, 80 Hawai'i 27, 32, 904 P.2d 912, 917 (1995).

5. The family court did not err in instructing the jury on self-induced intoxication over Defendant's objection, because there was sufficient support in the evidence and hence the family court had an independent obligation to do so. State v. Nichols, 111 Hawai'i 327, 337, 141 P.3d 974, 984 (2006).

6. The cumulative effect of any errors herein "was harmless and did not deprive the defendant of a fair trial." State v. Amarin, 58 Haw. 623, 632, 574 P.2d 895, 901 (1978).

Therefore,

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

IT IS HEREBY ORDERED that the November 28, 2005

judgment of the family court is affirmed.

DATED: Honolulu, Hawai'i, April 11, 2007.

On the briefs:

Karen T. Nakasone,
Deputy Public Defender,
for Defendant-Appellant.

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge

CONCURRING OPINION BY NAKAMURA, J.

I concur in the result.

Craig W. Nakamura