

NO. 27957

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

STATE OF HAWAI'I, Plaintiff-Appellee,  
v.  
LAURENS LAUDOWICZ, Defendant-Appellant

EMERITANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(FC-CR NO. 06-1-1198)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Laurens Laudowicz (Laudowicz) appeals from the Judgment of Conviction and Sentence filed on April 28, 2006 in the Family Court of the First Circuit (family court).<sup>1</sup>

Laudowicz was charged with Harassment, pursuant to Hawaii Revised Statutes § 711-1106(1)(a) (Supp. 2006). The charge stemmed from an incident involving Laudowicz and his wife, Kari-Ann Laudowicz (Kari-Ann). After a bench trial, the family court found Laudowicz guilty and sentenced him to six months of probation. The family court filed the findings of fact and conclusions of law on July 11, 2006.

On appeal, Laudowicz contends that: (1) the family court "erred in admitting Kari-Ann's statements to the police as an excited utterance where the state failed to adduce the requisite foundation for admissibility under this exception," and (2) "without the erroneously admitted" statements, there was not substantial evidence to support Laudowicz' conviction.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we conclude that the family court did not err by admitting

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<sup>1</sup> The Honorable Russel S. Nagata presided.

Kari-Ann's statements to police. Since we conclude that the statements were properly admitted, we further conclude that there was substantial evidence to support the conviction.

Our review of the record shows that there was adequate foundation for the statements made by Kari-Ann to the police. The prosecution sought to admit the statements through the testimony of Honolulu Police Department officer Ronald Weston (Weston), who responded to a 911 call from Kari-Ann in the early morning hours of February 19, 2006. In the 911 call, Kari-Ann stated that Laudowicz was "abusing" her and that "he keeps on hitting me." Officer Weston arrived at the Laudowicz residence within four or five minutes, and within another minute asked Kari-Ann what had happened. Weston testified that when he arrived at the home, Kari-Ann was yelling and appeared "angry, distraught, [and] upset."

Over the objection of the defense, Weston testified that Kari-Ann responded by saying that Laudowicz had "grabbed her hair, punched her in the face, spit at her, grabbed her arm, and threw her to the ground." Kari-Ann also told Weston that she felt pain in her head and arm.

A party seeking to introduce a statement as an excited utterance under Hawaii Rules of Evidence Rule 803(b)(2) (1993) must establish that (1) a startling event or condition occurred, (2) the statement was made while the declarant was under the stress of excitement caused by the event or condition, and (3) the statement relates to the startling event or condition. State v. Moore, 82 Hawai'i 202, 218, 921 P.2d 122, 139 (1996). In assessing the second part of that test, the key question is "whether the statement was the result of reflective thought or whether it was rather a spontaneous reaction to the exciting event." Id. at 219, 921 P.2d at 139.

All three requirements have been met here. The circumstances that led to Kari-Ann's statement were sufficiently startling to satisfy the rule. Cf. State v. Ortiz, 74 Haw. 343, 359-60, 845 P.2d 547, 555 (1993) (holding that a startling event

occurred based on testimony of a witness who heard the victim state "[w]hy [sic] did you hit me for?" and saw the victim crying and holding the side of her face). Indeed, as Kari-Ann conceded in her testimony, "I was upset. I was emotional. Something like that had never happened before with us." Additionally, the statement clearly relates to the startling events, thereby satisfying the third requirement set forth in Moore. 82 Hawai'i at 218, 921 P.2d at 139.

There was also ample foundation for the family court to conclude that Kari-Ann was still excited by the events when she made the statements to Weston. Most notably, there was substantial evidence establishing that Kari-Ann was visibly upset and emotional when she made the statements. This evidence consisted of Weston's observations, similar observations made by another officer who responded to the scene, and Kari-Ann's own testimony about her state of mind. Additionally, Kari Ann's statements were made a relatively short time (approximately 5-6 minutes) after her 911 call to police, in which she reported that Laudowicz "keeps hitting me."

The fact that Kari-Ann made the statements in response to a question from Weston does not require a different result. Cf. State v. Konohia, 106 Hawai'i 517, 524, 107 P.3d 1190, 1197 (App. 2005) (responses to questions from 911 dispatcher qualified as excited utterances). Moreover, Kari-Ann's statements were brief and directly related to the subject event, and thus are clearly distinguishable from the statements found inadmissible in State v. Machado, 109 Hawai'i 445, 452, 127 P.3d 941, 948 (2006) (statement was not admissible because it consisted of a lengthy and detailed narrative by the complaining witness in response to police questions).

For all these reasons, we conclude that the trial court did not err in admitting into evidence Kari-Ann's statements to Weston. With those statements properly admitted into evidence, there clearly was sufficient evidence to support the conviction.

Therefore,

IT IS HEREBY ORDERED that the Judgment of Conviction and Sentence entered by the Family Court of the First Circuit on April 28, 2006 is hereby affirmed.

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

On the briefs:

Jon N. Ikenaga,  
Deputy Public Defender,  
for Defendant-Appellant.

Daniel H. Shimizu,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

*Mark Richmond*  
Chief Judge

*Corinne K. A. Watanabe*  
Associate Judge

*Daniel R. Foley*  
Associate Judge