

NO. 27997

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ALLEN KIMURA, Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 05-1-0318(4))

MEMORANDUM OPINION

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

Defendant-Appellant Allen Kimura (Kimura) appeals from the Judgment Conviction and Probation Sentence [sic] filed on May 26, 2006 in the Family Court of the Second Circuit^{1/} (family court). The family court found Kimura guilty of Abuse of Family or Household Members, in violation of Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2005).

On appeal, Kimura argues as his sole point of error that the family court "erred in allowing the State to reopen [its] case after the defense moved for a judgment of acquittal."

I. BACKGROUND

On June 1, 2005, Plaintiff-Appellee State of Hawaii (State) filed a complaint against Kimura, alleging that on May 20, 2005, Kimura committed the offense of physical abuse of a family or household member (HRS § 709-906).

At the May 26, 2006 bench trial, the Complainant testified that on May 20, 2005 he was living on Waiehu Beach Road on Maui with his father, sister, stepmother, and stepbrother (Kimura). Complainant and Kimura stayed in separate places on the same property, sharing the backyard; Complainant slept in an

^{1/} The Honorable Richard T. Bissen, Jr., presided.

8 by 16 shack and Kimura lived in a boat. On May 20, 2005, Complainant was sitting in the backyard when his friend, Will, came through the gate and said he wanted to talk to Complainant. Kimura was following Will. Complainant asked Kimura to leave so that he and Will could speak privately, but Kimura refused and became agitated, eventually hitting Complainant in the face three or four times. Complainant required stitches for the injuries to his eye and lip.

After the State rested, Kimura moved for acquittal based on the State's failure to prove that Kimura and Complainant lived in the same dwelling, as required by HRS § 709-906. The State argued that as stepbrothers, Complainant and Kimura fell within the statute's consanguinity provisions. Following a recess, the State asked the family court to recall Complainant to the stand to further explain his living situation. Kimura objected. The family court allowed the State to reopen its case, and Complainant testified that although he and Kimura slept in separate structures, they shared the same kitchen and bathroom. The family court denied the motion for acquittal.

At the conclusion of trial, the family court found Kimura guilty as charged, sentenced him to one year of probation and 48 hours in jail with credit given for time served, ordered him to pay restitution and attend domestic violence intervention classes, and stayed the mittimus pending appeal. The family court filed its judgment on May 26, 2006. On June 23, 2006, Kimura timely filed his notice of appeal. On July 6, 2006, the family court filed its order requiring Kimura to pay \$432 in restitution.

II. STANDARD OF REVIEW

When reviewing family court decisions for an abuse of discretion, the appellate courts of Hawai'i have held:

The family court possesses wide discretion in making its decisions and those decisions will not be set aside unless there is a manifest abuse of discretion. Under the abuse of discretion standard of review, the family court's decision will not be disturbed unless the family court disregarded rules or principles of law or practice to the substantial detriment of a party litigant and its decision clearly exceeded the bounds of reason.

In the Interest of Doe, 77 Hawai'i 109, 115, 883 P.2d 30, 36 (1994) (internal quotation marks, citations, brackets, and ellipsis omitted).

III. DISCUSSION

A. The State Presented Insufficient Evidence Prior to Resting.

The parties agree that the State failed to present sufficient evidence prior to resting its case and that Kimura's motion for acquittal should have been granted.^{2/} We agree.

When considering a defendant's motion for acquittal pursuant to Rule 29 of the Hawai'i Rules of Penal Procedure, the family court must decide whether, upon the evidence viewed in the light most favorable to the State, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. State v. Alston, 75 Haw. 517, 528, 865 P.2d 157, 164 (1994). To convict Kimura of Abuse of Family or Household Members, the State had to prove that Kimura and Complainant were "spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, [or] persons jointly residing or formerly residing in the same dwelling unit." HRS § 709-906(1). After Kimura moved for acquittal, the State indicated it was relying on the consanguinity provision in the statute. When the State realized that the consanguinity provision did not apply in this case, the

^{2/} Although Kimura does not raise sufficiency of the evidences as a separate point of error, the parties treat it as one, and in the interests of clarity and efficiency, we do as well.

family court allowed the State to reopen and put on additional testimony as to the living arrangements of Kimura and Complainant. However, prior to the reopening, the evidence clearly indicated that the Kimura and Complainant lived in separate dwellings. Therefore, at the time Kimura moved for acquittal, the family court should have granted the motion. The State agrees that it presented insufficient evidence prior to resting.^{3/} We concur.

B. The Family Court Reversibly Erred by Allowing the State to Reopen Its Case and Present Additional Evidence.

The parties agree that the family court erred in allowing the State to reopen its case and present additional evidence after resting. Generally, permitting a party to reopen its case for submission of additional evidence is within the discretion of the trial court and is subject to review under the abuse of discretion standard. State v. Kwak, 80 Hawai'i 297, 304, 909 P.2d 1112, 1119 (1995) (Kwak II). We find an abuse of that discretion where the trial court clearly "exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant." Id. at 304-05, 909 P.2d at 1119-20. After the State rested, Kwak moved for acquittal on the ground that the State had failed to prove venue. State v. Kwak, 80 Hawai'i 291, 292, 909 P.2d 1106, 1107 (1995) (Kwak I).^{4/} At a subsequent hearing, the State requested that the district court take judicial notice of four maps. Id. at 293, 909 P.2d at 1108. Instead of taking judicial notice, the district court allowed the four maps to be marked as exhibits and

^{3/} Regardless of whether the parties agree, we decide each case as appropriate based on our own independent judgment.

^{4/} In response to the State's motion for reconsideration of State v. Kwak, 80 Hawai'i 291, 909 P.2d 1106 (1995), the Hawai'i Supreme Court filed State v. Kwak, 80 Hawai'i 297, 909 P.2d 1112 (1995).

received into evidence. Id. Kwak argued that this procedure essentially allowed the State to reopen its case. Id. The Hawai'i Supreme Court held that the district court had abused its discretion by allowing the State to reopen its case after it became apparent that Kwak's motion for acquittal should have been granted. Kwak II, 80 Hawai'i at 305, 909 P.2d at 1120.

Likewise, in this case, the State failed to establish its case prior to resting. The State had the opportunity to probe into the living arrangements of Kimura and Complainant on redirect examination of Complainant, but failed to do so. The family court abused its discretion by allowing the State to reopen its case and remedy its fatal flaw.

IV. CONCLUSION

Based on the foregoing, we vacate the Judgment Conviction and Probation Sentence [sic] filed on May 26, 2006 in the Family Court of the Second Circuit.

DATED: Honolulu, Hawai'i, September 7, 2007.

On the briefs:

Jeannie J. Park
for Defendant-Appellant.

Gerald K. Enriquez,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge