

DISSENTING OPINION BY NAKAMURA, J.

Defendant-Appellant Alfred J. Roman (Roman) made a *prima facie* showing that he was entitled to invoke the parental discipline defense set forth in Hawaii Revised Statutes (HRS) § 703-309(1) (1993). I therefore agree with the majority that the family court clearly erred in not applying the parental discipline defense in this case. I disagree, however, with the majority's conclusion that this error was harmless. In my view, the family court's failure to consider Roman's asserted parental discipline defense affected his substantial rights and was not harmless error. I further conclude that the family court harmfully erred in excluding evidence of Roman's non-physical attempts to deal with previous incidents of misconduct by Minor (the complaining witness). This evidence was relevant, under the parental discipline defense, to whether the force used by Roman in this case was reasonably proportional to the misconduct being punished. See State v. Crouser, 81 Hawai'i 5, 12, 911 P.2d 725, 732 (1996); State v. Matavale, 115 Hawai'i 149, 164-65, 166 P.3d 322, 337-38 (2007).

I would vacate Roman's conviction and remand for a new trial. I respectfully dissent.

*Craig H. Nakamura*