

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 26359

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
ALFRED J. ROMAN, Defendant-Appellant

NORMA T. YARA  
CLERK APPELLATE COURTS  
STATE OF HAWAII

2008 JAN 22 AM 9:45

FILED

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
(FC-CR. NO. 02-1-0350)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, and Fujise, J.;  
and Nakamura, J., dissenting)

Defendant-Appellant Alfred J. Roman (Roman) appeals from the Judgment filed in the Family Court of the Third Circuit (family court)<sup>1/</sup> on December 26, 2003. After a bench trial, the family court convicted Roman of Abuse of Family or Household Members, in violation of Hawaii Revised Statutes (HRS) 709-906(1) (Supp. 2005).

The family court sentenced Roman to two years of probation with the following special terms and conditions: Roman was (1) to serve a fifteen-day term of imprisonment, thirteen days of which would be stayed; (2) to attend a domestic violence intervention program; (3) to undergo an alcohol abuse assessment, follow recommended treatment, and be subject to any requested random urinalysis screening for drugs and/or alcohol; and (4) to not possess or consume alcohol during his probation period. The family court also ordered Roman to pay a \$150 probation fee and \$50 assessment to the Crime Victim Compensation Fund.

On appeal, Roman contends the family court erred in convicting him of the offense because (1) the court was wrong to conclude that the parental discipline defense (HRS § 703-309(1)

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<sup>1/</sup> The Honorable George S. Yuda presided.

(1993)) was inapplicable to the instant case; (2) the State of Hawai'i (State) failed to negate Roman's parental discipline defense; (3) the court erred by excluding evidence of Roman's previous non-physical attempts to deal with Minor's "misconducts," which constituted a violation of Roman's constitutional right to present a defense; and (4) the court was wrong to conclude that Minor's "inaction and defiance in response to a command by a parent or guardian" failed to constitute punishable misconduct.

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, as well as the relevant statutory and case law, we resolve Roman's points of error as follows:

(1) The family court clearly erred by not applying the parental discipline defense in the instant case because Roman's testimony, however weak, inconclusive, or unsatisfactory, was probative of the fact that (a) Roman had parental authority over Minor, (b) the force at issue was employed with due regard for Minor's age and size, and (c) the force was reasonably proportional to the misconduct being punished and reasonably believed necessary to protect the welfare of the recipient. State v. Stocker, 90 Hawai'i 85, 95, 976 P.2d 399, 409 (1999); see HRS § 703-309(1); State v. Crouser, 81 Hawai'i 5, 10-11, 911 P.2d 725, 730-31 (1996).

(2) The family court's error in ruling that the parental discipline defense did not apply in the instant case was harmless because the State provided sufficient evidence at trial to negate Roman's proffered parental discipline defense. Given Minor's version of events, there was substantial evidence to support a conclusion that Roman's kicking Minor in the lower back, making it sore; hitting Minor twice on the face, leaving

redness, soreness, and a lump there; and choking Minor because Minor did not grate the cheese as instructed and then did not grate it as Roman wanted was not reasonably proportional to Minor's misconduct or reasonably believed necessary to protect Minor's welfare. See In re Jane Doe, 95 Hawai'i 183, 190, 20 P.3d 616, 623 (2001); Crouser, 81 Hawai'i at 10-11, 911 P.2d at 730-31; see also State v. Miller, 105 Hawai'i 394, 399 & 402, 98 P.3d 265, 270 & 273 (App. 2004).

(3) Assuming arguendo, the family court abused its discretion by excluding evidence, based on irrelevance, of Roman's previous non-physical attempts to deal with Minor's "misconducts" (Roman testified that he had never disciplined or even punished Minor prior to the incident), such error was harmless. Hawai'i Rules of Penal Procedure Rule 52(a); State v. Gano, 92 Hawai'i 161, 176, 988 P.2d 1153, 1168 (1999).

(4) The family court did not conclude that Minor's "inaction and defiance" failed to constitute punishable misconduct.

Therefore,

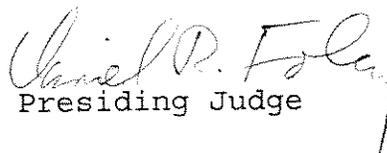
IT IS HEREBY ORDERED that the Judgment filed on December 26, 2003 in the Family Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 22, 2008.

On the briefs:

Henry Ting,  
Deputy Public Defender,  
for Defendant-Appellant.

Mary Ann J. Holzl-Davis,  
Deputy Prosecuting Attorney,  
County of Hawai'i,  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge