

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27941

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
KEITH CRUCE, Defendant-Appellant

EMERANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(FC-CR NO. 03-1-1814)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley, and Nakamura, JJ.)

Defendant-Appellant Keith Cruce (Cruce) appeals from the Judgment filed on April 20, 2006, in the Family Court of the First Circuit (family court).^{1/} Plaintiff-Appellee State of Hawai'i (State) charged Cruce by complaint with two counts of abuse of a family or household member, in violation of Hawaii Revised Statutes (HRS) § 709-906(1) (Supp. 2007).^{2/} The complaining witness (CW) was Cruce's wife. Following a jury trial, Cruce was found guilty as charged. The family court sentenced Cruce to concurrent terms of two years of probation with a special condition of 60 days of imprisonment for Count I

^{1/} The Honorable Richard A. Marshall presided over the original arraignment and plea hearing, the Honorable Russel S. Nagata presided over the return on bench warrant and arraignment and plea hearing, and the Honorable Reynaldo Gaulty presided over the trial and sentencing.

^{2/} HRS § 709-906(1) (Supp. 2007) provides, in relevant part, as follows:

§709-906 Abuse of family or household members;
penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member
.

For the purposes of this section, "family or household member" means spouses

and 120 days of imprisonment for Count II. The sentences were stayed pending appeal.

On appeal, Cruce asserts that the family court erred in denying his motion to dismiss the complaint based on Hawai'i Rules of Penal Procedure (HRPP) Rule 9^{3/} because "the State made no efforts to execute the [bench] warrant [issued for Cruce's arrest] for over two years." He also argues that the circuit court erred in: 1) denying his motion to dismiss because the delay in bringing him to trial violated HRPP Rule 48 and his constitutional right to a speedy trial; 2) admitting character evidence in violation of Hawaii Rules of Evidence Rules 401, 402, 403, and 404; 3) failing to give a self-defense jury instruction as to Count II; and 4) sentencing Cruce.

We hold that the State violated HRPP Rule 9 by failing to execute the bench warrant on Cruce without unnecessary delay, and we therefore reverse Cruce's convictions. Given this holding, we do not address the other arguments raised by Cruce on appeal.

I.

On May 29, 2003, a penal summons was issued on the State's complaint charging Cruce with two counts of abuse of a family or household member. Cruce was served with the penal summons on June 12, 2003. On July 1, 2003, the family court issued a bench warrant for Cruce's arrest when he failed to

^{3/} HRPP Rule 9 states, in pertinent part, as follows:

RULE 9. OBTAINING THE APPEARANCE OF DEFENDANT.

. . . .

(c) **Execution or service and return.**

. . . .

(3) **MANNER.**

(i) *Warrant.* The warrant shall be executed without unnecessary delay by the arrest of the defendant. . . . The officer executing the warrant shall bring the arrested person promptly before the court.

appear for arraignment and plea. The State did not execute the bench warrant until December 17, 2005, more than two years and five months later.

On December 20, 2005, a hearing was held on the return on the bench warrant and Cruce's arraignment and plea. Cruce pled not guilty to the charges and orally moved to dismiss the complaint for violation of HRPP Rule 9. The State requested that Cruce file a written motion to give it the opportunity to respond to the motion. The family court declined to rule on Cruce's oral motion to dismiss.

On January 17, 2006, Cruce filed a written "Motion to Dismiss for Violation of [HRPP] Rule 48 or Speedy Trial or [HRPP] Rule 9." Among other things, Cruce asserted that: 1) the record was devoid of any evidence that the State made any reasonable attempts to serve the bench warrant upon Cruce between July 1, 2003, and December 17, 2005, and 2) there was "absolutely no reason why" the bench warrant was served "with 'unnecessary delay.'" The State did not file a written response to Cruce's motion and did not proffer any evidence at the hearing on Cruce's motion that it had made any effort to serve Cruce, that any such attempts would have been futile, or that Cruce attempted to avoid service. The family court denied Cruce's motion on January 23, 2006.

II.

Under similar facts, the Hawai'i Supreme Court has held that the State violated HRPP Rule 9 by failing to serve bench warrants without unnecessary delay and that the trial court erred in failing to dismiss the underlying charges. State v. Lei, 95 Hawai'i 278, 21 P.3d 880 (2001); State v. Owens, 116 Hawai'i 172, 172 P.3d 484 (2007). We conclude that Lei and Owens provide controlling authority for Cruce's case. Accordingly, we reverse Cruce's convictions.

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IT IS HEREBY ORDERED that the April 20, 2006, Judgment of the family court is reversed.

DATED: Honolulu, Hawai'i, October 30, 2008.

On the briefs:

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for Defendant-Appellant

James M. Anderson
Deputy Prosecuting Attorney
City & County of Honolulu
for Plaintiff-Appellee

Cornine K.A. Watanabe
Presiding Judge

Samuel R. Foley
Associate Judge

Craig H. Nakamura
Associate Judge