

NO. 22870

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
PAULINO G. VILLANUEVA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-CR. NO. 97-0510)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Paulino G. Villanueva (Villanueva) appeals from the September 17, 1999, judgment, which convicted him of one count of Abuse of Family and Household Member in violation of Hawai'i Revised Statutes (HRS) § 709-906(1) (Supp. 1997).

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 resolve Villanueva's points of error as follows:

(1) Villanueva argues that the trial court erred in preventing him from exercising his constitutional right to present a defense by prohibiting him from cross-examining the complaining witness regarding a previous unrelated complaint against a different individual. Villanueva was otherwise permitted to cross-examine the complaining witness in this case,

thus giving the trial judge opportunity to appraise her credibility and bias. State v. Corella, 79 Hawai'i 255, 261, 900 P.2d 1322, 1328 (App. 1995). Considering the extent of cross-examination otherwise permitted and the overall strength of the State's case, State v. Balisbisana, 83 Hawai'i 109, 117, 924 P.2d 1215, 1223 (1996), including photographic evidence and the treating physician's testimony, and assuming arguendo that cross-examination was erroneously curtailed, we conclude after reviewing the record as a whole that such error was harmless beyond a reasonable doubt. State v. Pokini, 57 Haw. 26, 30, 548 P.2d 1402, 1405 (1976).

(2) Villanueva argues that the trial court abused its discretion in denying his motion for a new trial. He contends the trial court failed to act as a neutral arbiter when it warned defense counsel regarding the possibility of perjury and obstruction of justice. Villanueva's argument has no merit because the purpose of the trial court's comment was to protect the minor defense witnesses from the possibility of committing perjury or obstruction of justice. The subsequent appointment of Guardians Ad Litem to advise the minor witnesses demonstrates that the trial court's comment was grounded in a legal basis. State v. Pokini, 57 Haw. 17, 25, 548 P.2d 1397, 1402 (1976). Additionally, Villanueva contends that the court's comments had a chilling effect on his right to testify. The trial court gave an

on-the-record colloquy ensuring that Villanueva knowingly, intelligently, and voluntarily chose not to testify. Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995). Therefore, we conclude the trial court did not abuse its discretion in denying the motion.

Therefore,

IT IS HEREBY ORDERED that the September 17, 1999, judgment is affirmed.

DATED: Honolulu, Hawai'i, March 30, 2001.

On the briefs:

Kevin A. Souza,
Deputy Public Defender,
State of Hawaii,
for defendant-appellant.

Chief Judge

Tharrington T. Trusdell,
Deputy Prosecuting Attorney,
County of Hawaii,
for plaintiff-appellee.

Associate Judge

Associate Judge