

NOT FOR PUBLICATION

NO. 24569

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RUSSEL MONTIBON, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-Cr. No. 00-1-0303)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Russel Montibon (Montibon) appeals from the August 30, 2001 Judgment of the Family Court of the Third Circuit (the family court), Judge Terence T. Yoshioka presiding, convicting Montibon of Abuse of a Family or Household Member, in violation of Hawaii Revised Statutes (HRS) § 709-906(1) (Supp. 2000).¹

Montibon argues that the Judgment should be reversed because: (1) the prosecution did not submit, as part of its case-in-chief, the written police report for the alleged abuse, as required by HRS § 709-906 (Supp. 2002),² and therefore failed

^{1/} Hawaii Revised Statutes (HRS) § 709-906(1) (Supp. 2000) states, in relevant part:

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[.]

^{2/} HRS § 709-906 (Supp. 2002) provides now, as it did when Defendant-Appellant Russel Montibon was arrested, in relevant part, as follows:

Abuse of family or household members; penalty. . . .

(continued...)

to prove its case beyond a reasonable doubt; (2) the family court clearly erred by finding that Montibon was "angry rather than hurt upon suspecting that his wife had been unfaithful"; and (3) the family court abused its discretion by not finding Montibon's conduct to be *de minimis*.

Based on our review of the record on appeal and the briefs submitted by the parties, and having duly considered the case law and statutes relevant to the arguments advanced by the parties, we disagree with Montibon and conclude that:

(1) Nothing in HRS § 709-906 even remotely implies that the written police report mentioned in subsections (3) and

^{2/}(...continued)

. . . .

(2) Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer's presence:

. . . .

(d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person[.]

(4) (d) is a required part of the prosecution's case-in-chief. The report is a statutorily required part of the investigative process, not an element of the offense. The contents of the report would also be hearsay. The family court therefore did not plainly err by convicting Montibon without having the relevant police report in evidence.

(2) There was "substantial evidence" in the record to support the family court's finding that Montibon was "angry rather than hurt upon suspecting that his wife had been unfaithful[,]" a finding that the family court considered relevant in determining Montibon's credibility.

(3) The family court did not abuse its discretion when it refused to dismiss the charge against Montibon after concluding that Montibon's conduct against his wife was not *de minimis*.

Accordingly, the August 30, 2001 Judgment, convicting Montibon of and sentencing him for Abuse of a Family or Household Member, is affirmed.

DATED: Honolulu, Hawai'i, May 22, 2003.

On the briefs:

Nathan R. Brenner for
defendant-appellant.

Leslie S. H. Chow, deputy
prosecuting attorney,
County of Hawai'i, for
plaintiff-appellee.