

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27476

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

STATE OF HAWAI'I, Plaintiff-Appellee/Cross-Appellant, v.
IJEVA MATAVALE, Defendant-Appellant/Cross-Appellee
APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CRIMINAL NO. 05-1-1397)

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAI'I

2006 AUG 15 AM 9:10

FILED

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Lim and Fujise, JJ.)

Ijeva Matavale (Defendant) appeals the August 5, 2005 judgment of the Family Court of the First Circuit (family court)¹ that convicted her of abuse of a family or household member. The State cross-appeals the order pertaining to bail pending appeal entered by the family court on September 6, 2005.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we dispose of the points of error of Defendant and the State as follows:

1. Defendant contends the State adduced insufficient evidence at trial to disprove her parental discipline defense. This point lacks merit. There was substantial evidence to support the jury's verdict. State v. Eastman, 81 Hawai'i 131, 135, 139, 913 P.2d 57, 61, 65 (1996).

2. For her other point of error on appeal, Defendant

¹ The Honorable Patrick W. Border presided.

contends the family court committed "reversible error" by instructing the jury to continue deliberations and directing the jury to a previously-promulgated instruction on how to go about its deliberations, after the jury had indicated it was hung. We disagree.

First, a plain reading does not reasonably raise the inference that the instruction "direct[ed] the jury to matters outside the evidence presented," Defendant's Opening Brief at 32, or "implicitly led the jury to believe it was held hostage by the court until a verdict was agreed on." Id. at 16. Cf. State v. Villeza, 72 Haw. 327, 335, 817 P.2d 1054, 1058 (1991) ("it was error for the trial court to instruct the jury that it must unanimously decide that it was unable to reach a verdict").

Second, the instruction cannot be reasonably interpreted as "a subtle form of the Allen charge[.]" Opening Brief at 33. Cf. State v. Fajardo, 67 Haw. 593, 600-01, 699 P.2d 20, 24-25 (1985) (error to give the jury an Allen charge -- that a deadlock means the case must be retried, and that minority jurors should reconsider in light of their status as such).

Finally, the family court's response to the jury's report of deadlock was consonant with the relevant case law. "Had the trial court simply repeated an instruction given earlier to the jury on how to go about its deliberations, we feel that no prejudicial effect would have befallen Appellant." Id. at 601, 699 P.2d at 25 (footnote omitted). See also Villeza, 72 Haw. at

335, 817 P.2d at 1058-59 ("when the jury advised the court that it was unable to reach a verdict, the trial court properly exercised its discretion in determining that the jury might not be 'deadlocked' and by providing the jury with a complete set of the jury instructions").

"[T]he instructions, when considered as a whole, [were not] prejudicially insufficient, erroneous, inconsistent, or misleading[,] "id. at 333, 817 P.2d at 1057 (citations omitted), and thus the family court properly fulfilled its "obligat[ion] to exercise its broad discretion to obtain a verdict from the jury." Id. at 333, 817 P.2d at 1058 (citation omitted).

3. In its cross-appeal, the State contends the family court abused its discretion in releasing Defendant on her own recognizance pending appeal without a condition that she undergo domestic violence intervention and parenting classes, because of the family court's oral musings to the effect that it might not have the authority to impose such a condition under Hawaii Revised Statutes (HRS) § 804-7.1 (1993). We disagree.

The record before us shows that the family court did not abuse its discretion, State v. Stanford, 79 Hawai'i 150, 154, 900 P.2d 157, 161 (1995) ("the restrictions [on bail] imposed are well within the discretion of the trial court" (citations omitted)), in entering its September 6, 2005 order pertaining to bail pending appeal.

Therefore,

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IT IS HEREBY ORDERED that the family court's August 5, 2005 judgment and its September 6, 2005 order pertaining to bail pending appeal are affirmed.

DATED: Honolulu, Hawai'i, August 15, 2006.

On the briefs:

Nicole K. Gibby,
Deputy Public Defender,
for Defendant-Appellant/Cross-Appellee.

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee/Cross-Appellant.

Corinne K.A. Watanebe

Presiding Judge


Associate Judge

Aewa Olu'Jinisa

Associate Judge