

NO. 26968

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
CHARLES KAHEAKU, JR., Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 04-1-0341)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Charles Kaheaku, Jr. (Kaheaku) appeals from the Judgment filed on November 9, 2004 in the Circuit Court of the First Circuit (circuit court).^{1/} On February 25, 2004 the State of Hawaii (the State) charged Kaheaku via a Complaint with one count of Theft in the Second Degree, in violation of HRS § 708-831(1)(a) (Supp. 2004). The Complaint alleged that on or about February 13, 2004, Kaheaku did obtain or exert unauthorized control over another's property, from the person of Complainant, with intent to deprive her of the property.

On appeal, Kaheaku argues that (1) the circuit court abused its discretion in refusing to allow defense counsel to cross-examine Complainant regarding her mental condition and use of mood altering drugs at the time of the incident, (2) the circuit court should have sua sponte instructed the jury on

^{1/} The Honorable David William Lo presided.

specific unanimity, (3) it was prosecutorial misconduct for the prosecutor to repeatedly ask Kaheaku to comment on whether Complainant was lying, and (4) Kaheaku received ineffective assistance of counsel when his counsel failed to call a material witness and failed to object to the State's improper questions.

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 as raised by the parties, we conclude:

(1) The circuit court's refusal to allow Kaheaku to question Complainant regarding her mental condition and use of prescription medication in the presence of the jury was not an abuse of discretion and did not amount to a violation of Kaheaku's right to confrontation. Hawaii Rules of Evidence (HRE) Rules 402 and 403; State v. Okumura, 78 Hawai'i 383, 399, 894 P.2d 80, 96 (1995); State v. St. Clair, 101 Hawai'i 280, 286, 67 P.3d 779, 785 (2003); Kaeko v. Davis, 68 Haw. 447, 454, 719 P.2d 387, 392 (1986); State v. Furutani, 76 Hawai'i 172, 179, 873 P.2d 51, 58 (1994); State v. Sabog, 108 Hawai'i 102, 109, 117 P.3d 834, 841 (App. 2005); State v. Machado, 109 Hawai'i 424, 435, 127 P.3d 84, 95 (App. 2005).

(2) The circuit court did not err in not giving an unanimity instruction. Kaheaku relies on State v. Arceo, 84 Hawai'i 1, 928 P.2d 843 (1996), and State v. Mahoe, 89 Hawai'i

284, 972 P.2d 287 (1998), which do not control. During trial, the State referred only to Complainant's money -- not Complainant's money and her necklace -- as the property at issue. Therefore, unlike the juries in Arceo and Mahoe, the jury here did not have multiple elements or acts upon which to rely.

(3) The prosecutorial misconduct was harmless beyond a reasonable doubt. State v. Maluia, 107 Hawai'i 20, 108 P.3d 974 (2005).

(4) Kaheaku failed to show that he received ineffective assistance of counsel. State v. Aplaca, 74 Haw. 54, 70, 837 P.2d 1298, 1307 (1992); State v. Samuel, 74 Haw. 141, 158, 838 P.2d 1374, 1382 (1992); State v. Pacheo, 96 Hawai'i 83, 94, 26 P.3d 572, 583 (2001); Briones v. State, 74 Haw. 442, 463, 848 P.2d 966, 977 (1993).

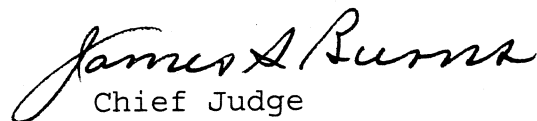
IT IS HEREBY ORDERED that the Judgment filed on November 9, 2004 in Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 8, 2006.

On the briefs:

Dwight C.H. Lum
for Defendant-Appellant

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


Chief Judge


Associate Judge


Associate Judge