

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27044

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
SUZETTE SILAO, Defendant-Appellant

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

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 04-1-2224)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Suzette Silao (Defendant) appeals from the Judgment filed on December 6, 2004, in the Family Court of the First Circuit (family court).^{1/} After a jury trial, Defendant was convicted of abuse of a family or household member, in violation of Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2005).^{2/} The family court sentenced her to a two-year term of probation, subject to the condition that she serve a 60-day term of imprisonment.

The complaining witness (the CW) was Defendant's husband. They had been married for almost eighteen months at the

^{1/} The Honorable Patrick W. Border presided.

^{2/} Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2005) provides in pertinent part:

§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

time of the charged incident. The trial evidence revealed that a dispute between Defendant and the CW arose after the CW declined Defendant's repeated requests that they take a shower together. Defendant then allegedly punched, slapped, and scratched the CW.

On appeal, Defendant argues that the family court erred in: 1) failing *sua sponte* to strike the testimony of Honolulu Police Department (HPD) Officer Robert Oakes (Officer Oakes) and give a curative instruction when the officer referred to the CW as "the victim;" and 2) overruling Defendant's "improper bolstering" objection to the prosecutor's questioning of Officer Oakes about the officer's extensive experience in making abuse arrests and responding to argument calls.

After a careful review of the record and the briefs submitted by the parties, we affirm the Judgment. We resolve Defendant's arguments on appeal as follows:

1. We reject Defendant's claim that the family court erred in failing *sua sponte* to strike Officer Oakes's testimony and give a curative instruction when the officer referred to the CW as "the victim." Defendant cites three instances in which Officer Oakes allegedly made improper reference to the CW as the victim. On the first occasion, Defendant did not object and the prosecutor immediately directed Officer Oakes to refrain from using the term "victim" and to refer to the CW as "the complainant." On the second occasion, Officer Oakes's use of the word "victim" was not in reference to the CW, but rather was part of a general statement by Officer Oakes that his initial task in responding to domestic argument calls is to "determine . . . who, if anybody, is a . . . victim." On the third occasion, the family court sustained Defendant's objection, albeit at side bar and not in front of the jury.

Officer Oakes's two references to the CW as "the victim" appeared to be inadvertent. Defendant did not move to

strike or request a curative instruction with respect to Officer Oakes's references. We conclude that the family court did not err in failing *sua sponte* to take the actions Defendant now urges on appeal. In addition, the family court instructed the jury that Defendant was presumed innocent unless and until the prosecution proved her guilt beyond a reasonable doubt and that the jury was not to be influenced by the fact that Defendant was charged with an offense. These instructions "dissipat[ed] whatever effect [Officer Oakes's use of] the term 'victim' might have had on the jury." State v. Nomura, 79 Hawai'i 413, 417, 903 P.2d 718, 722 (App. 1995). Accordingly, any failure of the family court to strike Officer Oakes's testimony and give a curative instruction did not affect Defendant's substantial rights. Hawai'i Rules of Penal Procedure (HRPP) Rule 52(b) (2007).

2. We conclude that the family court did not err in overruling Defendant's "improper bolstering" objection. Officer Oakes's testimony regarding his experience in handling domestic abuse cases was permissible to provide a context for his actions and observations in the investigation and to furnish the jury with a basis for assessing his credibility. We do not agree with Defendant's strained argument that Officer Oakes's testimony regarding his background, combined with his references to the CW as the victim, meant that Officer Oakes gave impermissible opinion testimony as an expert on the ultimate issue in the case. Officer Oakes did not express his opinion regarding Defendant's guilt. Nor did he express an opinion as to the CW's truthfulness, which renders inapt Defendant's reliance on State v. Batangan, 71 Haw. 552, 562-63, 799 P.2d 48, 54 (1990). Officer Oakes's testimony regarding his background did not amount to expert opinion testimony that Defendant was guilty, and thus

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Defendant's claim that such testimony prejudiced her substantial rights is without merit.

IT IS HEREBY ORDERED that the December 6, 2004, Judgment entered by the family court is affirmed.

DATED: Honolulu, Hawai'i, June 28, 2007.

On the briefs:

David B. Russell
Deputy Public Defender
for Defendant-Appellant

Ryan Yeh
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee



Presiding Judge



Associate Judge



Associate Judge