

NO. 23044

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
RODERICK PAUL C. MARIANO, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-0426)

MEMORANDUM OPINION

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

Defendant-Appellant Roderick Paul C. Mariano (Mariano) was convicted, as charged, pursuant to a jury trial in the Circuit Court of the First Circuit¹ (circuit court), of two counts of Sexual Assault in the Fourth Degree, in violation of Hawaii Revised Statutes (HRS) § 707-733(1)(a) (1993),² and three counts of Sexual Assault in the Second Degree, in violation of HRS § 707-731(1)(a) (Supp. 2000).³ Mariano appeals the

¹The Honorable Richard K. Perkins presided.

²HRS § 707-733 reads, in relevant part, as follows:

§707-733 Sexual assault in the fourth degree. (1) A person commits the offense of sexual assault in the fourth degree if:

(a) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion[.]

. . . .

(2) Sexual assault in the fourth degree is a misdemeanor.

³HRS § 707-731 reads, in relevant part, as follows:

§707-731 Sexual assault in the second degree. (1) A person commits the offense of sexual assault in the second degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by compulsion[.]

. . . .

(2) Sexual assault in the second degree is a class B felony.

October 22, 1999, Judgment; the October 29, 1999, Findings of Fact, Conclusions of Law and Order Denying Defendant's Motion for Judgment of Acquittal or in the Alternative for a New Trial (the October 29, 1999, Order); and the December 6, 1999, Amended Judgment.

Mariano contends on appeal that the circuit court erred in refusing to give the requested jury instruction on consent, in not admitting into evidence the unedited videotape (the "tape") of an interview with the victim, and in denying his Motion for Judgment of Acquittal or in the Alternative for a New Trial because the verdict was not supported by the evidence. We disagree and affirm the December 6, 1999, Amended Judgment of the circuit court.

I. BACKGROUND

On July 11, 1996, Mariano, a citizen of the Philippines and resident of Canada, was on vacation in Hawaii visiting family. He and his wife, Jenny, spent the night of July 11, 1996 (that night) at the home of his cousin, the victim's mother (Mother). The Marianos slept in the living room with Mother's three children that night. On July 12, 1996, Mariano and Jenny departed for their home in Canada. After Mariano and Jenny left, the victim advised her family that Mariano had sexually assaulted her during that night. The victim was fourteen years old at the time.

At trial, the victim testified that on that night the following events took place. During the evening, while the victim and Mariano were in the living room, Mariano took the victim's hand and stuck it into his shorts, and she felt his penis and pubic hair. The victim did not say anything to Mariano. Later, while the victim was sleeping, Mariano reached over the victim's sleeping seven-year-old brother, stuck his hand in her sports bra, and fondled her breast. The victim pretended to be asleep.

The victim testified that at one in the morning, Mariano went to the bathroom. The victim awakened, got up, and went into the kitchen where she waited for Mariano to go back to bed so she could then go to her own bedroom to sleep. When the victim thought Mariano had left the bathroom, she went into the hallway, turned on the hall light, and saw Mariano standing in the hall. Mariano grabbed the victim's hand and pulled her closer. Mariano kissed the victim, sticking his tongue in her mouth and sucking her lip; then, with his hands on her shoulders, Mariano pushed her to her knees. Mariano placed his penis in the victim's mouth and held her head, thrusting in and out.

Mariano then took the victim into the bathroom. The victim told Mariano, "I don't want to do this"; Mariano told her not to tell anyone. Mariano told the victim to undress, and she removed her pants and underwear. Mariano made the victim sit on

the sink, and he placed his tongue in her vagina. Mariano then placed his penis part way into her vagina. The victim did not cry out because she was afraid her parents would blame her. Mariano left and the victim then went to bed in her bedroom. All these events happened without the victim's permission.

Testifying in his own defense, Mariano denied that any of these events occurred and denied using the bathroom during that night. Mariano testified that he wore long pants with a belt, not shorts, and that he slept wearing his pants that night.

Jenny Mariano testified that she did not remember Mariano getting up to use the bathroom that night. Jenny stated that she knows when Mariano gets up at night because she sleeps with her legs between his.

Of the sixteen persons sleeping in the victim's residence on July 11, 1996,⁴ none testified to witnessing any of these events.

During Mariano's attorney's cross-examination of the victim, Mariano proposed the introduction of a July 15, 1996, videotaped interview of the victim. Mariano offered the tape to show prior inconsistent statements, as well as the victim's demeanor.⁵ Mariano did not indicate specific inconsistent

⁴The victim resided with her mother, father, sister, two brothers, two grandparents, a cousin, four aunts and an uncle.

⁵"[T]he Complainant was not traumatized and was laughing and giggling during the interview."

statements in his offer of the evidence.⁶ The State objected to this offer in that the tape was inadmissible hearsay. At a subsequent hearing, the State also argued that the tape contained inadmissible statements of prior sexual conduct, citing to Hawaii's rape shield statute -- Hawaii Rules of Evidence (HRE) Rule 412 (1993).⁷

At the subsequent hearing, Mariano argued that HRE Rule 412 was not applicable because the victim's statements of her prior sexual experience were untrue.⁸ The circuit court ruled that portions of the tape were inadmissible under HRE Rule 412 and asked Mariano's attorney to provide an edited tape, omitting the inadmissible portions.

⁶"THE COURT: Well, what are the prior inconsistent statements?

[Defense Counsel]: There's probably several, Your Honor."

⁷ HRE Rule 412 states, in relevant part, as follows:

Rule 412 Sexual assault cases; relevance of victim's past behavior.

. . . .

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of sexual assault, evidence of an alleged victim's past sexual behavior other than reputation or opinion evidence is not admissible to prove the character of the victim in order to show action in conformity therewith[.]

This rule was amended in 1999: "sexual assault" was changed to "sexual offense and sexual harassment" in the title of the rule and to "sexual offense" in the second line of subsection (b).

⁸During the taped interview, the victim describes a conversation with Mariano in which he asked her if she had had sex before and she answered "yes," when, in reality, she had not had sex before. Mariano also asked her if she had been kissed before and whether she had enjoyed it.

Mariano then argued that without showing the entire tape, the jury would speculate on the missing portions of the tape. The circuit court proposed a jury instruction that would advise the jury not to speculate on deleted portions of the tape and told Mariano's attorney that he was free to submit a proposed instruction on the matter. The State then proposed to admit other portions of the tape, pursuant to HRE Rule 106 (1993).⁹ In response, Mariano withdrew his offer to introduce any portion of the videotaped interview.

After the jury returned its verdict, Mariano filed a Motion for Judgment of Acquittal or in the Alternative for New Trial. Mariano argued: (1) there was no credible evidence to support the jury's verdict, inasmuch as the victim was the sole person to testify to the offenses and her "testimony was not credible or believable so as to amount to proof beyond a reasonable doubt[;]" and (2) the circuit court erred in refusing to allow "the introduction of an unedited tape recording of the interview of complainant[,]" because the edited version of the taped recording "which cut approximately 30 minutes off the

⁹HRE Rule 106 reads as follows:

Rule 106 Remainder of or related writings or recorded statements. When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the party at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

original was not sufficient to give the jury the full picture of the complainant's testimony."

The October 29, 1999, Order denying Mariano's motion for judgment of acquittal stated the following Findings of Fact and Conclusions of Law:

1. The Court takes judicial notice of the trial testimony and proceedings;
2. Sufficient evidence was presented to the jury such that a reasonable mind can fairly conclude guilty beyond a reasonable doubt;
3. The Court previously ruled that twenty minutes of [the victim's] taped statement was admissible for impeachment purposes. This segment of the tape was sufficient to show [the victim's] calm, laughing demeanor;
4. In accordance with the Hawai[i] Rules of Evidence, the Court ruled that the remainder of the tape in question was not admissible;
5. The Defense decided not to introduce any portion of [the victim's] tape;
6. The interest of justice does not warrant a new trial.

II. STANDARDS OF REVIEW

A. Jury Instructions

When jury instructions or the omission thereof are at issue on appeal, the standard of review is whether, when read and considered as a whole, the instructions given are prejudicially insufficient, erroneous, inconsistent, or misleading. Erroneous instructions are presumptively harmful and are a ground for reversal unless it affirmatively appears from the record as a whole that the error was not prejudicial.

[E]rror is not to be viewed in isolation and considered purely in the abstract. It must be examined in the light of the entire proceedings and given the effect which the whole record shows it to be entitled. In that context, the real question becomes whether there is a reasonable possibility that error may have contributed to the conviction.

State v. Tabigne, 88 Hawai i 296, 302, 966 P.2d 608, 614 (1998) (citations omitted). If there is a reasonable

possibility that error might have contributed to a conviction in a criminal case, then the error cannot be harmless beyond a reasonable doubt, and the conviction must be set aside.

State v. Klinge, 92 Hawaii 577, 583, 994 P.2d 509, 515 (2000)

(internal quotation marks and citations omitted).

B. Admissibility of Evidence

[D]ifferent standards of review must be applied to trial court decisions regarding the admissibility of evidence, depending on the requirements of the particular rule of evidence at issue. When application of a particular evidentiary rule can yield only one correct result, the proper standard for appellate review is the right/wrong standard. However, the traditional abuse of discretion standard should be applied in the case of those rules of evidence that require a "judgment call" on the part of the trial court.

State v. Kelekolio, 74 Haw. 479, 520-21, 849 P.2d 58, 77 (1993)

(quoting Kealoha v. County of Hawaii, 74 Haw. 308, 319-20, 844 P.2d 670, 676 (1993)).

"Under the de novo or right/wrong standard, this court examines the facts and answer [sic] the question without being required to give any weight to the trial court's answer to it."

State v. Kapiko, 88 Hawaii 396, 401, 967 P.2d 228, 233 (1998)

(internal quotation marks and brackets omitted).

C. Sufficiency of the Evidence

We review the sufficiency of the evidence as follows:

This court has held that when the appellate court passes on the legal sufficiency of trial evidence to support a conviction the test is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Substantial evidence as to every material element of the offense charged is credible evidence which is of sufficient

quality and probative value to enable a person of reasonable caution to support a conclusion.

State v. Kalama, 94 Hawai i 60, 67, 8 P.3d 1224, 1231 (2000)

(internal quotation marks, citations, brackets, and ellipses omitted).

D. Denial of Motion for Acquittal or in the Alternative for New Trial

When reviewing a post-verdict motion for judgment of acquittal,

we employ the same standard that a trial court applies to such a motion, namely, whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact, the evidence is sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. Sufficient evidence to support a prima facie case requires substantial evidence as to every material element of the offense charged. Substantial evidence as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. Under such a review, we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact.

State v. Timoteo, 87 Hawai i 108, 112-13, 952 P.2d 865, 869-70

(1997) (quoting State v. Jhun, 83 Hawai i 472, 481, 927 P.2d 1355, 1364 (1996)).

III. DISCUSSION

A. Jury Instructions

On the issue of consent, Mariano's Requested Jury

Instruction No. 7 read:

Consent is a complete defense to each of the offenses charged in the Indictment, if the consent negatives and [sic] element of any of the offenses charged or precludes the infliction of the harm sought to be prevented by the law defining the offense.

The burden is on the Prosecution to prove beyond a reasonable doubt that the complaining witness [the victim] did not consent to the conduct alleged or the result thereof. If the Prosecution fails to meet its burden, then you must find the defendant not guilty.

Mariano's Requested Jury Instruction No. 7 was denied by the circuit court, which instead gave the following Court's Supplemental Instruction No. 10 (Instruction No. 10) to the jury:

In any prosecution, the complaining witness's consent to the conduct alleged or to the result thereof, is a defense if the consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

Consent is not a defense if it is induced by force, duress, or deception.

The burden is upon the prosecution to prove beyond a reasonable doubt that the complaining witness did not consent to the conduct alleged or the result thereof. If the prosecution fails to meet its burden, then you must find the defendant not guilty.

Mariano objected to the language in Instruction No. 10 that "[c]onsent is not a defense if it is induced by force, duress, or deception." Mariano objected to this language because "[b]y Complainant's own admission, there were no threats of force, nor actual force allegedly used by Eric Mariano." However, contrary to Mariano's argument, force was at issue in this case.

The victim testified that she told Mariano "I don't want to do this," she was physically forced to her knees in the hall, she felt that she had no choice about going into the bathroom because she was scared, and she didn't cry out because she was afraid of what her parents would say. There was evidence

that the lack of trauma to the victim's body was inconclusive as to the use of force.

Mariano's argument was that if there were sexual acts or contacts, they occurred with the victim's consent. Mariano cites evidence that there was no trauma to the victim's body and the victim did not cry out or offer resistance during the alleged events.

Instruction No. 10 was not prejudicially insufficient, erroneous, inconsistent, or misleading. State v. Tabigne, 88 Hawai i 296, 302, 966 P.2d 608, 614 (1998). Additionally, Mariano's contention that he was entitled to an instruction stating that "consent is a 'complete' defense to the charges" is without merit. Mariano relies on State v. Lira, 70 Haw. 23, 759 P.2d 869 (1988). Mariano misreads Lira, which stands for the proposition that a defendant

is entitled to an instruction on every defense or theory of defense having any support in the evidence, provided such evidence would support the consideration of that issue by the jury, no matter how weak, inconclusive or unsatisfactory the evidence may be.

Id. at 27, 759 P.2d at 871 (internal quotation marks omitted and emphasis in original).

Instruction No. 10 communicated that the State had the burden of proving beyond a reasonable doubt that the victim did not consent to Mariano's conduct and, if the State failed to do so, the jury was required to find Mariano not guilty. The

instruction thus indicated that consent constitutes a complete defense to the charged offenses.

B. Admissibility of the Videotaped Interview

On appeal, Mariano contends the circuit court's refusal to admit an unedited videotaped statement made by the victim a few days after the alleged events was prejudicial error. Mariano offered the tape to show the victim's demeanor, which was allegedly inconsistent with her claim of assault, and to show the victim's prior inconsistent statements. The circuit court ruled that the entire tape was not necessary to show the victim's demeanor and that portions of the tape were inadmissible under HRE Rule 412.

1. Waiver

Initially, we address the State's argument that because Mariano withdrew his offer to play the edited tape, Mariano waived this issue. Generally, the failure to object below precludes raising the point on appeal. HRE Rule 103 (1993).¹⁰

¹⁰HRE Rule 103 reads, in relevant part, as follows:

Rule 103 Rulings on evidence. (a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

- (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
- (2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

See also Federal Rules of Evidence (FRE) Rule 103.¹¹ "In the situation where a party makes an objection, then decides to withdraw it, one may properly speak of the objection having been waived." 21 C. Wright & K. Graham, Federal Practice and Procedure: Evidence § 5033 at 163 (1977).

In the instant case, Mariano's offer was for the entire unedited tape. In withdrawing the offer, Mariano precluded the State from showing the edited portion it offered under HRE Rule 106. Because of his objection to the circuit court's ruling of inadmissibility on the unedited version of the tape, Mariano withdrew the edited version; however, he never withdrew his objection. Thus, we hold that Mariano preserved this issue on appeal, and we look to the merits of the circuit court's rejection of the unedited tape.

2. Prior Inconsistent Statements

Mariano contends that because the victim admittedly lied when she told Mariano she had sex before, her statement

¹¹ FRE Rule 103 reads, in relevant part, as follows:

Rule 103 Rulings on evidence. (a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

- (1) Objection. In case the ruling is one admitting evidence a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
- (2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

falls outside the scope of HRE Rule 412 and is therefore admissible. Mariano, however, has not established on the record how this statement is admissible as a prior inconsistent statement, nor has he specifically referenced any statements made on the tape that are inconsistent with the victim's in-court testimony. This is required by Hawaii Rules of Appellate Procedure (HRAP) Rule 28(b)(4)(A).¹² Therefore, we conclude the circuit court did not err in ruling that portions of the tape are inadmissible as to the victim's alleged inconsistent statements.

3. Victim's Prior Sexual Behavior

In the portion of the tape ruled inadmissible by the circuit court, the victim relates a conversation between herself and Mariano in which Mariano asks her whether she had sex before, whether she had been kissed before, and whether she enjoyed it.

¹²HRAP Rule 28(b)(4)(A) reads as follows:

Rule 28. BRIEFS.

. . . .
(b) Opening Brief. Within 40 days after the filing of the record on appeal, the appellant shall file an opening brief, containing the following sections in the order here indicated:

. . . .
(4) A concise statement of the points of error set forth in separately numbered paragraphs. Each point shall state: (i) the alleged error committed by the court or agency; (ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency. Where applicable, each point shall also include the following:

(A) when the point involves the admission or rejection of evidence, a quotation of the grounds urged for the objection and the full substance of the evidence admitted or rejected[.]

These are questions about the victim's prior sexual behavior, and regardless of the truth or falsity of the answers, both the questions themselves and the victim's answers come within the purview of HRE Rule 412. The circuit court was correct in excluding those portions of the tape.¹³

4. Demeanor

Mariano contends that it was prejudicial error to deny admission of the entire tape because, in contrast with the victim's emotional testimony at trial, the tape shows the victim "in full control of her emotions and without emotion in giving her testimony. She did not cry, and in fact laughed at points." Mariano voluntarily withdrew the tape from evidence because "[a]fter all the deletions, there was very little to see in terms of demeanor and the extent to which the Complainant was not traumatized and was laughing and giggling during the interview."

¹³Mariano also argues that "[t]he Court's refusal to admit the entire videotape . . . deprived Defendant of his important Sixth Amendment right to present a defense." **OB at 26.** We note that HRE Rule 412, by its plain language, allows for exceptions when the evidence "is constitutionally required to be admitted." Rule 412(b)(1) (1993). Therefore, evidence of a victim's past sexual behavior that is sufficiently probative to fall within the rights of confrontation is admissible and the rule itself is constitutional. See State v. Calbero, 71 Haw. 115, 124, 785 P.2d 157, 161 (1989) (holding that the accused has a right to reasonable cross-examination when the government first opens the door on inadmissible evidence of prior sexual conduct.) See also Michigan v. Lucas, 500 U.S. 145, 111 S. Ct. 1743 (1991) (holding that the ten-day notice requirement of Michigan's rape shield law serves legitimate state interests such that failure to comply may justify the severe sanction of preclusion of the evidence.)

When Mariano first offered the tape, the circuit court was inclined to allow some of the tape to show demeanor, but not the entire one-hour tape. Mariano asked for ten minutes, and the circuit court agreed. The October 29, 1999, Order states: "[t]he Court previously ruled that twenty minutes of [the victim's] taped statement was admissible for impeachment purposes. This segment of the tape was sufficient to show [the victim's] calm, laughing demeanor."

Mariano initially indicated that ten minutes would be sufficient to adequately show the victim's demeanor, but even after the court allowed twenty minutes, Mariano withdrew the entire tape. We conclude the circuit court did not abuse its discretion in allowing twenty minutes after Mariano requested ten minutes.

Mariano also objects on the basis that "the tape was not complete and would leave the jury wondering about the deletions." The record illustrates that the circuit court proposed to instruct the jury as follows: "You will notice that portions of the video tape recorded interview with the complainant have been deleted. You are not to concern yourself [sic] with these deletions or speculate about them or concern [your]selves with the deletions in any way." The circuit court

also advised Mariano's counsel that he was free to submit proposed jury instructions.

We conclude the circuit court did not abuse its discretion in finding that the admissible portion of the tape was sufficient to show the victim's demeanor.

C. Sufficiency of the Evidence

Mariano argues that the verdict must be overturned because this is essentially a one-witness case and the witness is not credible. Mariano states that the victim's testimony was "contradictory and not true[,] " while his testimony described himself as a quiet, happily-married man.

In Counts I and II, Mariano was charged with Sexual Assault in the Fourth Degree. To convict Mariano of these charges, the State was required to prove that Mariano subjected the victim to sexual contact by compulsion. "Sexual contact" is defined as

any touching of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

HRS § 707-700 (1993). "Compulsion" is defined as the "absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss."

Id.

In regards to Counts I and II, the victim testified that Mariano took her hand and placed her hand into his shorts so she could feel his penis and pubic hair, and that she felt sick but did not say anything because she was ashamed. The victim testified she was awakened during the night when Mariano placed his hand inside her sports bra and fondled her breast. The victim pretended to be asleep and tried to casually move away, but Mariano kept his hand on her breast.

In Counts III, IV, and V, Mariano was charged with knowingly subjecting the victim to an act of sexual penetration by compulsion. With regards to Count III, the victim testified that she awoke when Mariano went to the bathroom at about 1:00 a.m., and that she waited in the kitchen for him to go back to bed so she could go to sleep in her bedroom. She testified that Mariano was in the hallway when she attempted to go to her bedroom and that he forcefully pushed her to her knees and stuck his penis in her mouth. With regard to Count IV, the victim testified that Mariano took her into the bathroom where he told her to take her clothes off, lifted her onto the sink, and placed his tongue in her vagina. The victim testified she told him she did not want to do this. As to Count V, the victim testified that Mariano stuck his penis into her vagina, without her permission.

The jury convicted Mariano on all five counts. The jury found the victim's testimony was therefore "credible evidence which is of a sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Kalama, 94 Hawaii at 67, 8 P.3d at 1231 (internal quotation marks and brackets omitted).

**D. Denial of Motion for Judgment of Acquittal
or in the Alternative for New Trial**

Mariano argues he is entitled to a new trial to ensure justice and fairness. He states:

This case is one where a series of events combine to prejudice a Defendant, and is one in which this Court has granted relief from the sum of several errors or events. The evidence in the case is thin at best. The jury was prejudiced against Defendant because of the constant references to the alleged victim's tender age (14) and reminders that the Defendant was a blood relative (her uncle). The jury was prejudiced against Defendant not so much on evidence, but on the allegations of abuse of a 14 year old girl. The case was not decided solely on the evidence, but on emotions.

There was substantial evidence adduced at trial which the jury, as trier of fact, found credible in support of Mariano's conviction. As to Mariano's contention that the victim's young age and family relationship to Mariano was emphasized, Mariano does not point to anything in the record where such references may have caused unfair prejudice to Mariano. We conclude there was no unfair "prejudices and biases" that prevented the jury from determining credibility, weighing the evidence, and drawing justifiable inferences of fact.

IV. CONCLUSION

The December 6, 1999, Amended Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawaii, November 14, 2001.

On the briefs:

Mark S. Kawata
for defendant-appellant.

Chief Judge

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge