

NO. 23386

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

CELSO CASINTAHAN, Defendant-Appellant

and

CAROLYN DASALLA, Defendant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 98-2011)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,  
Ramil, and Acoba, JJ.)

Defendant-Appellant Celso Casintahan (Defendant)

appeals from a March 24, 2000 judgment of conviction and sentence of the first circuit court (the court)<sup>1</sup> on five counts of sexual assault in the first degree, Hawai'i Revised Statutes (HRS) § 707-730(1)(b) (1993)<sup>2</sup> and four counts of sexual assault in the

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<sup>1</sup> The Honorable Marie N. Milks was the trial and sentencing judge herein.

<sup>2</sup> HRS § 707-730(1)(b) provides as follows:

(1) A person commits the offense of sexual assault in the first degree if:

. . . .

(b) The person knowingly subjects to sexual penetration another person who is less than fourteen years old . . . .

third degree, HRS § 707-732(1)(b) (1993).<sup>3</sup>

On appeal, Defendant contends (1) that the specific instruction of the court regarding the unanimity requirement of the jury's verdict was confusing and, thus, violated his constitutional right to require that Plaintiff-Appellee State of Hawai'i (the prosecution) prove its case beyond a reasonable doubt; and (2) that several closing argument remarks by the prosecution constituted misconduct.

In reviewing jury instructions, the question is whether, "when read and considered as a whole, the instructions given are prejudicially insufficient, erroneous, inconsistent, or misleading." State v. Cabrera, 90 Hawai'i 359, 364-65, 978 P.2d 797, 802-03 (1999) (citations and internal quotation marks omitted). Contrary to Defendant's first contention, the reading of the specific unanimity instruction, separate from the instructions on the elements of the individual counts, and the lack of reference to "state of mind" in that instruction were not errors because the jury was instructed to consider the instructions as a whole and in light of all the others.

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<sup>3</sup> HRS § 707-732(1)(b) provides in part:

(1) A person commits the offense of sexual assault in the third degree if:

. . . .

(b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person[.]

Accordingly, it was unnecessary that the unanimity instruction be repeated after the instructions on each count or that the state of mind requirement be repeated in the specific unanimity instruction. It is presumed that the jury follows the court's instructions. See State v. Haanio, 94 Hawai'i 405, 415, 16 P.3d 246, 256 (2001). Additionally, there is no evidence in the record that the court's inadvertent statement that "there's an error," in the middle of its reading of the specific unanimity instruction confused the jury or prejudiced Defendant, and Defendant fails to make any such showing of confusion or prejudice.

A harmless beyond a reasonable doubt standard applies to allegations of prosecutorial misconduct and, on review, the question is "whether there is a reasonable possibility that the error might have contributed to the conviction." State v. Balisbisana, 83 Hawai'i 109, 114, 924 P.2d 1215, 1220 (1996).

Contrary to Defendant's argument, the prosecution did not make a personal appeal to the jury by arguing that "just and fair verdicts in this case is that the [D]efendant is guilty as charged." Although as a general rule prosecutors should refrain from expressing their personal views regarding a defendant's guilt to the jury, see State v. Marsh, 68 Haw. 659, 660-61, 728 P.2d 1301, 1302-03 (1986), the prosecutor uttered only a general statement that Defendant should be found guilty.

Second, the prosecutor did not bolster the credibility of its own witnesses by telling the jury that if it were "going to make up evidence," it would "do a better job" instead of leaving "holes" or "discrepancies" in the testimony of the witnesses. The prosecutor does not improperly vouch for the credibility of a witness where it argues reasonable inferences from the evidence, see State v. Klinge, 92 Hawai'i 577, 592, 994 P.2d 509, 524 (2000); State v. Clark, 83 Hawai'i 389, 304, 926 P.2d 194, 209 (1996), or asks the jury to apply common sense. See State v. Caprio, 85 Hawai'i 92, 107, 937 P.2d 933, 948 (App. 1997).

Third, the prosecutor's statement that the jurors were responsible for "judg[ing]" Defendant, as societal laws apply to all, was not harmful error. There was no express argument that the jury should act as the community's conscience, the jurors were instructed they were the judges of the facts, the defense did not timely object to such advice to the jury at trial, and the jury was instructed that it should only weigh the evidence in determining Defendant's guilt. See State v. Schmidt, 84 Hawai'i 191, 202, 932 P.2d 328, 339 (1997).

Finally, the prosecution's comment that Defendant had a personal stake in the outcome of the case was not improper, when Defendant took the stand and testified, because his credibility may then be attacked like any other witness. See State v.

Apilando, 79 Hawai'i 128, 142, 900 P.2d 135, 149 (1995).

Furthermore, the prosecution is permitted wide latitude in closing arguments to convince the jury of its own theory of the case. See Klinge, 92 Hawai'i at 592, 994 P.2d at 524. In sum, the prosecutor's comments did not constitute misconduct and, thus, there was no error. Therefore,

IT IS HEREBY ORDERED that the court's March 24, 2000 judgment of conviction and sentence is affirmed.

DATED: Honolulu, Hawai'i, August 22, 2001.

On the briefs:

Joseph R. Mottl for  
defendant-appellant  
on the opening brief.

Theodore Y.H. Chinn for  
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