
NO. 24687

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

JOHN SWIFT, Defendant-Appellant.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR NO. 01-1-2412)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy JJ.,
and Intermediate Court of Appeals Judge Lim,
in place of Acoba, J., recused)

The defendant-appellant John Swift appeals from a judgment of conviction and sentence entered on October 18, 2001 by the Family Court of the First Circuit, the Honorable Michael D. Wilson presiding, adjudging Swift guilty of, and sentencing him for, abuse of a family or household member, in violation of Hawai'i Revised Statutes (HRS) § 709-906 (1993 & Supp. 1999).

On appeal, Swift contends that: (1) the family court plainly erred by instructing the jury that state of mind was a separate element, failing to separate the elements of "conduct" and "result," and failing to specify that state of mind applied to all elements of the offense; (2) the family court erred by admitting evidence that Swift hit John Haina; and (3) he was denied the effective assistance of counsel because trial counsel failed to (a) object to the prosecutions's leading questions to

Coralene Kaai concerning her living arrangements with Swift, (b) cross-examine Kaai about whether she had ever lived with Swift, (c) question Swift about his awareness of whether he and Kaai were family or household members, and (d) argue in closing argument, that there was insufficient evidence to satisfy Kaai's household member status beyond a reasonable doubt.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we hold as follows: (1) the family court did not plainly err by instructing the jury that state of mind was a separate element, failing to separate the elements of "conduct" and "result," and failing to specify that state of mind applied to all elements of the offense, as the record does not reveal error that adversely affected Swift's substantial rights, see State v. Aganon, 97 Hawai'i 299, 303, 36 P.3d 1269, 1273 (2002); (2) the family court did not err by admitting evidence that Swift hit John Haina, as the evidence was relevant to show Swift's reckless state of mind at the time of his near-simultaneous physical confrontation with Kaai and Haina, and was more probative than prejudicial, see State v. Pinero, 70 Haw. 509, 518, 778 P.2d 704, 710 (1989); and (3) Swift was not denied his right to effective assistance of counsel because the specific errors of omission alleged in the presentation of evidence and closing argument appear to reflect a

trial strategy by defense counsel to leave the record concerning Kaai's status as a household member unclear rather than risk establishing that Kaai was indeed a household member, and focus Swift's defense on the credibility of the prosecution's witnesses, a tactical decision by defense counsel which will not be subjected to further scrutiny, see State v. Uyesugi, 100 Hawai'i 442, 449, 60 P.3d 843, 850 (2002), and the record does not show any error by defense counsel which resulted in the withdrawal or substantial impairment of a potentially meritorious defense, see Uyesugi, 100 Hawai'i at 449, 60 P.3d at 850 (2002). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, October 7, 2003.

On the briefs:

Bryant Zane,
Deputy Public Defender,
for Defendant-Appellant
John Swift

James M. Anderson,
Deputy Prosecuting Attorney,
for Plaintiff-Appellee
State of Hawai'i