
NO. 25114

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

MICHAEL SHAW, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-2311)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Michael Shaw appeals from the April 26, 2002 judgment of conviction and sentence of the Circuit Court of the First Circuit, the Honorable Fa'auuga To'oto'o presiding, adjudging him guilty of and sentencing him for two counts of sexual assault in the third degree, in violation of Hawai'i Revised States (HRS) § 707-732(1)(b) (1993).¹ On appeal, Shaw contends that the trial court plainly erred in admitting the complaining witness's (Complainant) (1) hearsay statements and (2) testimony acknowledging the difference between a truth and a lie and promising to tell the truth. Shaw also contends that the

¹ HRS § 707-732 provides in pertinent 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[.]

prosecution denied him a fair trial by: (1) violating the circuit court's ruling excluding evidence that an unopened condom was found in Shaw's pocket when he was arrested; (2) using an analogy comparing Shaw to a leopard during closing argument; and (3) arguing during rebuttal that Complainant's testimony was not the product of fantasy.

Upon carefully reviewing the record and the briefs submitted by the parties and having been due consideration to the issues raised and the arguments advanced, we resolve issues raised on appeal as follows: (1) Complainant's hearsay statements were properly admitted under Hawai'i Rules of Evidence (HRE) Rule 803(b)(2) (1993), see State v. Moore, 82 Hawai'i 202, 218, 921 P.2d 122, 138 (1996), and did not violate HRE Rule 608(a)(2) (1993); (2) admission of Complainant's testimony acknowledging the difference between a truth and a lie and promising to tell the truth did not constitute plain error, see State v. Torres, 85 Hawai'i 417, 425, 945 P.2d 849, 857 (App. 1997); (3) the prosecutor's stricken statements regarding the unopened condom found on Shaw at the time of his arrest does not require reversal of the conviction in this case, see State v. Kupihea, 80 Hawai'i 307, 317-18, 909 P.2d 1122, 1132-33 (1996); (4) although the prosecutor's analogy during closing argument was improper, Shaw's substantial rights were not affected, see State v. Valdivia, 95 Hawai'i 465, 481, 24 P.3d 661, 677 (2001); and (5) the prosecutor's rebuttal argument was responsive to the

defense's closing argument, see State v. Meyer, 99 Hawai'i 168, 172, 53 P.3d 307, 311 (App. 2002); see also State v. Loa, 83 Hawai'i 335, 354, 926 P.2d 1258, 1277 (1996), and was based upon reasonable inferences from the evidence presented. See State v. Clark, 83 Hawai'i 289, 304, 926 P.2d 194, 209, reconsideration denied, 83 Hawai'i 545, 928 P.2d 39 (1996). Accordingly,

IT IS HEREBY ORDERED that the trial court's April 26, 2002 judgment of conviction and sentence for two counts of sexual assault in the third degree is affirmed.

DATED: Honolulu, Hawai'i, October 24, 2003.

On the briefs:

Joyce K. Matsumori-Hoshijo,
Deputy Public Defender,
for defendant-appellant

James M. Anderson,
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for plaintiff-appellee