

NO. 24334

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Petitioner/Plaintiff-Appellee

vs.

GEOFFREY WELSH, Respondent/Defendant-Appellant

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(FC-CR NO. 00-1-1002)

MEMORANDUM OPINION

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

Certiorari was granted herein on March 22, 2004. For the reasons stated herein, the February 13, 2004 memorandum opinion of the Intermediate Court of Appeals (the ICA) is reversed.

I.

On December 14, 2000, Petitioner/Plaintiff-Appellee State of Hawai'i (the prosecution) charged Respondent/Defendant-Appellant Geoffrey Welsh (Respondent) with abuse of a family or household member, Hawai'i Revised Statutes § 709-906 (Supp. 2002). Trial proceeded on May 29, 2001. Respondent was convicted as charged and the Family Court of the Second Circuit (the court)<sup>1</sup> entered a judgment of probation on May 29, 2001. On June 4, 2001, Respondent appealed. On February 13, 2004, the ICA

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<sup>1</sup> The Honorable Eric G. Romanchak presided.

issued its opinion vacating the judgment and remanding for a new trial. State v. Welsh, No. 24334, at 20 (App. Feb. 13, 2004) (mem.) [hereinafter "Op."]. On March 15, 2004, the prosecution filed the application for writ of certiorari with this court.

At the bench trial on May 29, 2001, paramedic Alfred Layer (Layer), Maui Police Department (MPD) Officer Asbel Polanco (Polanco), MPD Officer Paul Bailey (Bailey), and MPD 911 dispatcher Diane Caderos (Caderos) testified for the prosecution, and Respondent testified on his own behalf. The complainant, Haunani Chandler (Haunani), did not testify.

The ICA concluded that there was clearly substantial evidence in the record from which the court could infer that Respondent physically abused Haunani with the minimum requisite state of mind, i.e., recklessness. The ICA recounted that Respondent admitted to Caderos that he "tried to hurt [Haunani] and . . . would like to turn [himself] in for abuse of a family member." Op. at 20. Respondent also informed the police officers responding to his 911 call that "he just abused his girlfriend[,]" and "had choked his girlfriend, and . . . wanted to be arrested for abuse." Op. at 20. Layer testified that he observed Haunani with "some red marks about her neck." Layer asked Haunani how she had received the red marks to determine how she had been injured, and documented everything in his report. The court admitted Layer's report into evidence. Layer then testified that Haunani informed him that she had been choked by

Respondent with both hands about her neck and that she had lost consciousness briefly. Layer also testified that Haunani stated she felt swollen in her throat.

Respondent admitted in a handwritten statement that he "grabbed" Haunani to move her and "became aware of the fact that [he] was actually hurting her." Op. at 20. According to Respondent, on December 5, 2000, in the middle of the night, Haunani came over to Respondent's house unannounced. Respondent told her to leave, but she did not leave. Respondent went to lie down and about a half hour later heard Haunani drinking beer and watching television. Haunani then came to lie down in his bed. Because Haunani would not leave, Respondent decided to physically remove her.

Respondent testified that he was pushing Haunani forward toward the door and his hands got near her neck. On cross-examination, Respondent stated that he "put one hand behind her head at the base of her head which, yes, is the neck" and picked her up to physically remove her. Respondent denied that Haunani lost consciousness. Nevertheless, the ICA vacated the court's May 29, 2001 judgment and remanded the case for a new trial because the admission of Haunani's prior out-of-court statement to Layer violated Welsh's constitutional right to confrontation.

## II.

In its petition, the prosecution agrees with the ICA

that sufficient evidence existed to sustain Respondent's conviction and does not take issue with the ICA's determination that the court erred in allowing into evidence Layer's recitation of Haunani's out-of-court statement. But, the prosecution urges that the ICA erred in failing to apply the "harmless error" analysis to the said error, which the prosecution had argued in its answering brief. As the prosecution notes, a violation of the constitutional right to confront adverse witnesses is subject to the harmless beyond a reasonable doubt standard of review. State v. Peseti, 101 Hawai'i 172, 178, 65 P.3d 119, 125 (2003). In its opinion, the ICA did not address the prosecution's argument that the admission of Haunani's statements was harmless error.

III.

In its answering brief, the prosecution had maintained that even if it had failed to demonstrate that Haunani was unavailable, such error was harmless, as other sufficient evidence existed for the court's ruling that Respondent recklessly abused Haunani. In that regard, the prosecution recounts, in detail, that: (1) Respondent made a 911 call wherein he said, "I tried to hurt [Haunani]" and "I would like to turn myself in for abuse of a family member"; (2) Respondent admitted to Polanco that "he just abused his girlfriend"; (3) Respondent related to Bailey that he "choked his girlfriend" and that "he wanted to be arrested for abuse"; (4) the paramedic

as well as Polanco testified to observing red marks on Haunani's neck; (5) Respondent reported in his written statement, "I grabbed her in a manner to move her up (she was lying down) as I began to control my girlfriend physically, I then saw fear in her eyes and became aware of the fact that I was actually hurting her"; and (6) on cross examination, Respondent testified that he "put one hand behind her head at the base of her head which, yes, is the neck." The defense did not file a reply brief.

IV.

Under the circumstances, we hold that the error was harmless beyond a reasonable doubt. According to State v. Balisbisana, 83 Hawai'i 109, 117, 924 P.2d 1215, 1223 (1996),

[w]hether such an error is harmless in a particular case depends upon a host of factors . . . . These factors include the importance of the witness' testimony in the prosecution's case, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, . . . and, of course, the overall strength of the prosecution's case.

The evidence was sufficient to convict Respondent without the testimony of Haunani's statement to Layer. Layer's testimony as to that was cumulative of other evidence:

(1) Respondent's oral admissions in the 911 call that he had abused Haunani; (2) Layer's observations of red marks on Haunani's neck; (3) Respondent's statement to Polanco that he had abused Haunani; (4) Polanco's observations of a redness on Haunani's neck; (5) Bailey's testimony that Respondent said he had "choked his girlfriend" and he "wanted to be arrested for abuse"; (6) Respondent's testimony that he grabbed her near her

neck; and (7) Respondent's written statement that he "grabbed her . . . to move her up (she was lying down)" and he was aware of the fact that he "was actually hurting her[.]" This evidence corroborated the charge. In light of Respondent's own admissions at the time of the incident of the choking and abuse and the corroborating evidence of marks on Haunani's neck observed by the paramedic and a police officer, the erroneous admission of Haunani's out-of-court statement was harmless beyond a reasonable doubt.

V.

For the foregoing reasons, the February 13, 2004 memorandum opinion of the ICA is reversed, and the court's May 29, 2001 judgment of probation is affirmed.

DATED: Honolulu, Hawai'i, April 5, 2004.

Arleen Y. Watanabe,  
Deputy Prosecuting Attorney,  
County of Maui, on the  
application for petitioner/  
plaintiff-appellee.