

*** NOT FOR PUBLICATION ***

NO. 24885

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee
vs.

CHRISTINA STARLEY, Defendant-Appellant

NORMA T. YARRA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 01-1-1945)SUMMARY DISPOSITION ORDER

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

Defendant-appellant Christina M. Starley [hereinafter "Christina"] appeals from the first circuit family court's¹ January 7, 2002 judgment convicting Christina of the offense of abuse of a family or household member, in violation of Hawai'i Revised Statutes [hereinafter "HRS"] § 709-906 (Supp. 2001)² and sentencing her to two years of probation. Christina raises the following points of error on appeal: (1) the jury instructions were defective inasmuch as they did not clearly set forth the requirement that the act and result must each be accompanied by the requisite state of mind; (2) the family court erred by

¹ The Honorable Steven Alm presided.

² HRS § 709-906 provides, in relevant part, the following:

§709-906 Abuse of family or household members; penalty.

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

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refusing to provide the jury with Christina's proposed specific unanimity instruction; (3) the family court improperly excluded relevant evidence by sustaining the prosecution's objection to questions about the relationship between Rulon Hal Starley and his attorney, as it pertained to the filing of the instant charge; and (4) the jury's verdict was not supported by substantial evidence in the record.

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, we hold that: (1) the family court's consolidation of the "conduct" and "result" elements of the offense in its jury instructions did not adversely affect Christina's substantial rights;³ (2) the family court did not err by refusing to read Christina's proposed unanimity instruction inasmuch as the prosecution effectively elected the culpable act upon which it relied to establish a violation of HRS § 709-906;⁴ (3) the family court did not err by

³ See State v. Aganon, 97 Hawai'i 299, 303, 36 P.3d 1269, 1273 (2001) ("In this case, the circuit court incorrectly listed "conduct" and "result" together as one element. On remand, the elements of "conduct" and "result" should be separately listed. Although the circuit court erroneously listed the requisite state of mind as a "material element," contrary to HRS § 702-205, . . . the error did not adversely affect Aganon's substantial rights. The court's jury instructions were consonant with the spirit of HRS § 702-204, which prescribes that the requisite state of mind applies to each element of the offense. Thus, the jury instructions were substantively, if not technically correct.") (Emphasis added.).

⁴ See State v. Arceo, 84 Hawai'i 1, 32-33, 928 P.2d 843, 874-75 (1996) ("[W]e hold that when separate and distinct culpable acts are subsumed within a single count charging a sexual assault--any one of which could support a conviction thereunder--and the defendant is ultimately convicted by a jury of the charged offense, the defendant's constitutional right to a unanimous verdict is violated unless one or both of the following occurs: (1) at or before the close of its case-in-chief, the prosecution is required to elect the specific act upon which it is relying to establish the "conduct" element of the charged offense; or (2) the trial court gives the jury a

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sustaining the prosecution's objections to questions regarding the relationship between Hal and his attorney inasmuch as Christina failed to make offers of proof and thus failed to preserve the issue for appeal;⁵ and (4) there was sufficient evidence to support Christina's conviction of the offense of abuse of family or household members.⁶ Therefore,

⁴(...continued)

specific unanimity instruction, *i.e.*, an instruction that advises the jury that all twelve members must agree that the same underlying criminal act has been proved beyond a reasonable doubt."); State v. Ortiz, 91 Hawai'i 181, 198, 981 P.2d 1127, 1144 (1999) ("The prosecution made no effort to develop the facts necessary to establish a violation of HRS § 708-831(b)(1) with regard to the theft of Johnson's property. Accordingly we hold that the prosecution effectively made an election, in satisfaction of the requirements set out in Arceo." (emphasis in original); State v. Maumalanga, 90 Hawai'i 58, 64, 976 P.2d 372, 378 (1998) ("Accordingly, inasmuch as no effort was made to develop the facts necessary to establish a violation of HRS § 134-6 with regard to the period in which Maumalanga transported the firearms from his home to his place of business or to argue that the aforementioned act constituted a violation, we hold, on the present record, that the prosecution made an effective election, in satisfaction of the Arceo requirements, to base its charge of place to keep loaded firearm on Maumalanga's conduct in taking the firearm from his workplace to the gas station where the shooting incident occurred.") (emphasis in original).

⁵ See Hawai'i Rules of Evidence [hereinafter "HRE"] Rule 103(a)(2) (1993) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n 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."); Commentary to HRE Rule 103(a) ("This subsection expresses the principle that a ruling admitting or excluding evidence cannot be assigned as error unless it affects a substantial right and unless the court is clearly apprised of the nature of the claimed error and of the corrective action sought. The objection or motion to strike, addressed to a ruling admitting evidence, and the offer of proof, directed to a ruling excluding evidence, provide the appropriate mechanisms."); State v. Kelekolio, 74 Haw. 479, 522-23, 849 P.2d 58, 78 (1993) (holding that the trial court did not commit reversible error by excluding evidence where Kelekolio failed to make an offer of proof).

⁶ In State v. Aki, 102 Hawai'i 457, 464, 77 P.3d 948, 955 (App. 2003), the Intermediate Court of Appeals rejected a similar claim of insufficient evidence, as follows:

Clearly, for both arguments, Aki relies upon the story supported by his and Clark's trial testimonies. Aki forgets that, where the sufficiency of the evidence is concerned, we take the
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IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.


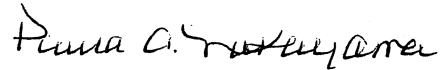
DATED: Honolulu, Hawai'i, May 5, 2006.

On the briefs:

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Christina Starley



Mark Yuen, Deputy
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State of Hawai'i



Barbara E. [unclear]

⁶(...continued)

evidence 'in the light most favorable to the State[.]' [State v. Ildefonso, 72 Haw. [573,] 576, 827 P.2d [648,] 651 [(1992)] (citations omitted). From that perspective, Clark's written statement to the police prevails. In that version of the incident, Aki, in the heat of argument, grabbed and pulled Clark's hair, then hit her in the mouth, immediately after Clark had told him she was "not going to take any more of his abuse." To be sure, this was substantial evidence for the jury to find mens rea as to result. . . .

In the final analysis, Aki's plaint of insufficiency of the evidence is, that the jury should not have believed the written statement over the live testimony at trial. But credibility and weight of the evidence are matters that begin and end with the jury, and concern us not on appeal.

(Some brackets added, some in original.) See also State v. Martinez, 101 Hawai'i 332, 340, 68 P.3d 606, 614 (2003) ("But '[i]t is well settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact.'" (alteration in original) (citations omitted); State v. Mitchell, 94 Hawai'i 388, 393, 15 P.3d 314, 319 (App. 2000) ("The appellate court will neither reconcile conflicting evidence nor interfere with the decision of the trier of fact based on the witnesses' credibility or the weight of the evidence.")).