

NO. CAAP-13-0000396

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DEIRDRE ICHIMURA, also known as
DEIRDRE A. ICHIMURA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 12-1-1497)

SUMMARY DISPOSITION ORDER
(By: Nakamura, C.J., Fujise and Ginoza, JJ.)

Defendant-Appellant Deirdre Ichimura, also known as Deirdre A. Ichimura (Ichimura), appeals from the Circuit Court of the First Circuit's (Circuit Court)¹ March 14, 2013 judgment of conviction and sentence for violation of Hawaii Revised Statutes (HRS) § 707-712.6 (2014), Assault Against a Law Enforcement Officer in the Second Degree.

On appeal, Ichimura maintains that the Circuit Court erred in permitting testimony by a Honolulu Police Department officer present at the scene of the incident that (1) Ichimura appeared to be under the influence of drugs rather than suffering from a mental illness and (2) the judge issuing a bench warrant for Ichimura's arrest would have been aware if Ichimura suffered from a mental illness.

¹

The Honorable Judge Patrick W. Border presided.

After a careful review of the issues raised and arguments made by the parties, the record, and the applicable authority, we resolve Ichimura's points on appeal as follows and affirm.

1. The Circuit Court did not err in admitting Officer Denny Santiago's (Officer Santiago) testimony that it appeared to him that Ichimura was more likely on drugs than suffering from a mental illness. The admission of lay opinion testimony under Hawaii Rules of Evidence (HRE) Rule 701² is reviewed for an abuse of discretion. State v. Toyomura, 80 Hawai'i 8, 23-24, 904 P.2d 893, 908-09 (1995). Admissible lay opinion testimony must be within the witness's personal knowledge, be rationally based on the perception of the witness, and be helpful to the trier of fact. Toyomura, 80 Hawai'i at 25, 904 P.2d at 910.

Officer Santiago testified, without objection, that based on Ichimura's behavior, it appeared to him that Ichimura was "high on something[.]" Officer Santiago also testified that he had been exposed to training on behaviors that persons with mental health issues might present, observed Ichimura's behavior at the time of the incident, which included being "on a rant," "very fidgety, she wouldn't stay still, real eccentric hand gestures, wide-eyed, very loud-spoken," and that his approach to persons who were under the influence of drugs or were mentally ill might be different than with other individuals. Officer Santiago opined that "[i]t appeared to be that she was more on drugs than having a mental illness" but also conceded that he did not know whether Ichimura was on drugs or not.

²

HRE Rule 701, Opinion testimony by lay witnesses provides,

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness, and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

The Circuit Court ruled that this testimony was not "for the truth" but was relevant to what Officer Santiago's perception and reaction to the situation was. Under these circumstances, Ichimura has failed to demonstrate an abuse of discretion in admitting this testimony.³

2. Assuming, without deciding, that the Circuit Court should have stricken Officer Santiago's remark that he assumed the judge issuing the arrest warrant would have been made aware if Ichimura had a mental illness, any error was harmless. Ichimura did not assert a lack of penal responsibility as a defense, but rather, her defense was that she did not assault any of the officers. In addition, Officer Santiago's remark was made in the context of describing his actions - whether he would "have done anything differently if [he] had known that [Ichimura] has a mental illness." To the extent that the remark contradicted Ichimura's position that she indeed suffered from a mental illness the impact was minimal at best. Officer Santiago's comment was incomplete as he was stopped before explaining what his assumption was based on, was explicitly a matter of the officer's conjecture, and added nothing of substance to whether Ichimura's behavior during the incident in question was due to drugs or mental illness. Ichimura's mother testified at trial that Ichimura had an unspecified "handicap" for which she was seeing a psychiatrist and was taking medication on the day in question. Both Officers Nutter and Santiago testified that their behavior did not turn on the possible cause or catalyst for

³ We note that, at the time Officer Santiago gave this testimony, Officer Christopher Nutter (Officer Nutter), the first officer at the scene and who had participated in Ichimura's arrest, had already testified, without objection, that he had received training at the police Academy about dealing with persons with mental illnesses, that he had experience in the field with persons having mental illnesses, and Ichimura was "acting like she was on drugs." Thus, Officer Santiago's testimony was cumulative of Officer Nutter's testimony.

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Ichimura's behavior. On this record, we conclude the error, if any, was harmless.

Based on the foregoing, the March 14, 2013 Judgment entered by the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 6, 2016.

On the briefs:

William H. Jameson, Jr.
Deputy Public Defender,
for Defendant-Appellant.

Chief Judge

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge