

DISSENTING OPINION BY NAKAMURA, C.J.

I respectfully dissent. In my view, the Circuit Court erred in excluding evidence that the complaining witness (CW) had a pending assault charge arising out of the same incident and evidence that the CW was under probation supervision for a misdemeanor offense.

At the time of trial, the CW had a pending assault charge for assaulting the wife of Defendant-Appellant Walter Brown (Brown) that arose out of the same incident that generated the assault charges against Brown.<sup>1/</sup> The CW was also on probation for a misdemeanor assault offense. These circumstances created a potential interest, motive, and bias for the CW to testify falsely that was different in nature and character than revealed by the other evidence permitted by the Circuit Court. The CW would be subject to criminal punishment if she were convicted of assaulting Brown's wife. In addition, if the CW admitted to assaulting Brown's wife or Brown, she would face the possible revocation of her probation. Thus, the CW had an interest, motive, and bias -- her own self-interest in avoiding criminal punishment -- to deny that she assaulted Brown's wife or Brown and to deny that Brown's actions were taken in defense of his wife or in his own self-defense. The evidence excluded by the Circuit Court was the only viable means for Brown to impeach the CW with her interest, motive, and bias to shape her testimony to avoid her own criminal punishment. Accordingly, I believe the Circuit Court erred in excluding evidence that the CW had a pending assault charge for assaulting Brown's wife and was under probation supervision.

Both of the disinterested bystanders acknowledged that they did not observe the entire interaction between the CW, Brown, and Brown's wife. Under the circumstances presented, I cannot conclude that the Circuit Court's error in excluding the

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<sup>1/</sup> The CW had also been arrested and charged with assaulting Brown in the same incident, but the State of Hawai'i had dismissed that charge shortly before the CW testified in Brown's case.

evidence that the CW had a pending assault charge arising out of the same incident and evidence that she was under probation supervision was harmless beyond a reasonable doubt.