

**Electronically Filed
Intermediate Court of Appeals
CAAP-22-0000698
12-OCT-2026
07:59 AM
Dkt. 123 SO**

NO. CAAP-22-0000698

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
CURTIS RYAN BEKKUM, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CPC-22-0000240)

SUMMARY DISPOSITION ORDER

(By: Nakasone, Chief Judge, Leonard and Guidry, JJ.)

Defendant-Appellant Curtis Bekkum (**Bekkum**) appeals from the November 3, 2022 Judgment; Conviction and Probation Sentence; Terms and Conditions of Probation; Notice of Entry (**Judgment**) entered by the Circuit Court of the Second Circuit (**Circuit Court**).¹

After a jury trial, Bekkum was convicted of two counts of Sexual Assault in the Fourth Degree in violation of Hawaii Revised Statutes (**HRS**) § 707-733(1)(a) (Supp. 2016). Bekkum timely filed a notice of appeal. On June 13, 2025, this court entered a Summary Disposition Order (**Bekkum I**), vacating Bekkum's conviction based on Bekkum's challenge to the charges against him. The State of Hawaii (**State**) sought further review and, on

¹ The Honorable Peter T. Cahill presided.

certiorari, the Hawai'i Supreme Court concluded that this court erred in concluding that the complaint was defective. The supreme court remanded the case to this court to address Bekkum's remaining points of error.²

In the remaining points of error, Bekkum contends that: (1) the Circuit Court reversibly erred in failing to instruct the jury to disregard certain hearsay testimony that was stricken and in admitting certain hearsay evidence; (2) Bekkum's due process rights were violated due to prosecutorial misconduct; (3) Bekkum's trial counsel provided ineffective assistance of counsel; and (4) the Circuit Court abused its discretion when it orally denied Bekkum's Motion for New Trial.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised, we resolve Bekkum's remaining points of error as follows:

(1) Bekkum argues that the Circuit Court erred in admitting hearsay testimony that improperly bolstered the complaining witness's (**CW's**) credibility, as well as in one instance, failing to instruct the jury to disregard a stricken portion of CW's testimony.

As Bekkum acknowledges in his opening brief, he did not object to a number of instances of purportedly wrongfully admitted hearsay testimony at trial. Accordingly, the arguments against these testimonies are waived. See State v. Crisostomo,

² In Bekkum I, this court addressed the first three of Bekkum's seven points of error.

94 Hawai'i 282, 290, 12 P.3d 873, 881 (2000) ("A hearsay objection not raised or properly preserved in the trial court will not be considered on appeal.").

At trial, Bekkum objected to: (1) CW's testimony that her daughter asked her to go to the police; and (2) CW's testimony that her doctor told her, "please at least communicate with the medical board."

Our review is governed by the following:

Where the admissibility of evidence is determined by application of the hearsay rules, the appropriate standard of review is the right/wrong standard. State v. Moore, 82 Hawai'i 202, 217, 921 P.2d 122, 137 (1996). Under a right/wrong standard, courts will review the trial court's decision *de novo*, examining the factors and answering the question "without being required to give any weight to the trial court's answer to it." State v. Kapiko, 88 Hawai'i 396, 401, 967 P.2d 228, 233 (1998) (citations and internal quotation signals omitted).

State v. Haili, 103 Hawai'i 89, 99, 79 P.3d 1263, 1273 (2003).

Regarding CW's daughter's statement to go to the police, the Circuit Court sustained Bekkum's hearsay objection, stating that the statement was hearsay and not relevant. The court further stated that it would instruct the jury that this portion of testimony had been stricken, but apparently did not do so. Except as otherwise provided, the Hawaii Rules of Evidence (**HRE**) bar the admission of hearsay, which is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." HRE Rules 801, 802.

The rule against hearsay does not exclude a statement merely offered to show that the statement was made and that the listener was affected by the statement. . . .

A great many out-of-court utterances fall within such categories as greetings, pleasantries, expressions of gratitude, courtesies, questions, offers, **instructions**, warnings, exclamations, expressions of joy, annoyance, or other emotion. Such utterances are not intentional expressions of facts or opinions and they are not

assertions, at least for purposes of the hearsay rule, and thus they are not hearsay.

23 C.J.S. Criminal Procedure and Rights of Accused § 1166
(emphasis added).

Here, CW was the sole witness who testified concerning the alleged incidents of sexual assault. Starting with the opening statement to the jury, defense counsel repeatedly stated that CW was not believable for three reasons and reason number one was that she failed to report the assault for seven months.³ CW's daughter telling CW to go to the police was a segment of testimony elicited from CW related to her not initially reporting the incident, but then going to the police after seven months. This statement is not offered for the truth of the matter asserted - that CW's daughter thought CW should go to the police - but rather as part of the explanation for CW's subsequent conduct, *i.e.*, the effect on the listener, *i.e.*, that CW eventually heeded the advice she was getting to report the alleged sexual assaults. See State v. Feliciano, 2 Haw. App. 633, 636-37, 638 P.2d 866, 869-70 (1982) (officer's testimony recounting neighbor's out-of-court statements was not admitted

³ In opening statement, defense counsel emphasized this point:

There's three reasons why [CW] is unbelievable. Number one, she failed to report the assault for seven months. Seven months. That is 32 weeks. That is 224 days where she got up every day and had her coffee and could have made a phone call to report this crime. She didn't do it.

The second "reason" was that CW had "different versions of the story" and the third was "money," which defense counsel also tied into the delayed reporting, saying: "So at some point, she decided that she was more interested in jackpot justice than telling the truth. She's got a reason to come out of the woodwork seven months later and concoct a story."

In closing argument, defense counsel again argued that the delay should be considered "devastating" to the complaining witness's credibility. Thus, it is clear from the record that the testimony concerning the alleged circumstances and reasons for CW's delay in reporting the alleged assaults were relevant to the jury's determination of her credibility.

for the truth of what the neighbor said, but to explain the neighbor's subsequent actions).

Similarly, CW's testimony that her doctor encouraged her to "at least communicate with the medical board" about the incident is not hearsay because it was not offered for the truth of the matter asserted. This statement was offered to explain why CW contacted the Department of Commerce and Consumer Affairs first, instead of the police, as well as part of the explanation for eventually reporting the alleged incidents. See id. Accordingly, we conclude that neither of the challenged statements were offered for the truth of the matters asserted; therefore they were not inadmissible hearsay.

(2) Bekkum argues that the deputy prosecuting attorney (**DPA**) committed prosecutorial misconduct by offering irrelevant and unduly prejudicial victim impact testimony by CW and an improper closing argument.

First, Bekkum challenges the State's eliciting of CW's testimony that: (1) CW was afraid to make the complaint or go to the police; (2) CW observed that it does not go well for women when they file a complaint; (3) CW was afraid of losing her job if she reported the incidents; (4) CW was scared of retaliation by Bekkum; and (5) CW felt there would be public retaliation if she filed the complaint. As Bekkum acknowledges in his opening brief, he did not object to the admission of this testimony or to the DPA's closing argument. Accordingly, "'appellate review is limited to a determination of whether the prosecutor's alleged misconduct amounted to plain error' that affected the defendant's substantial rights." State v. Riveira, 149 Hawai'i 427, 431

n.10, 494 P.3d 1160, 1164 n.10 (2021) (quoting State v. Iuli, 101 Hawai'i 196, 204, 65 P.3d 143, 151 (2003)).

Victim impact evidence concerns a crime's effect on the person harmed by the crime or others, especially the person's family members. It includes evidence regarding the physical, psychological, or economic effect of a crime. See [HRS] § 706-602(1)(c) (2014) (instructing that victim impact statements in the sentencing context include "any physical or psychological harm or financial loss suffered").

During a trial, a crime's after-effects are rarely allowed. [HRE] Rules 401, 403. In State v. Lora, 147 Hawai'i 298, 307-09, 465 P.3d 745, 754-56 (2020), [the supreme] court disallowed victim impact evidence to counteract a cross-examination undermining a witness's credibility. "[The supreme court] reject[ed] an approach that would permit the admissibility of the impacts of an alleged offense on a complaining witness in order to bolster the witness's credibility after it has been impeached or attacked." Id. at 309 n.14, 465 P.3d at 756 n.14.

Id. at 431, 494 P.3d at 1164 (footnotes omitted).

Here, the challenged testimony was offered to explain why CW delayed seven months to report the assaults to the police. As noted above, defense counsel emphasized CW's seven month delay by asserting in opening statement that CW was "unbelievable" due to, *inter alia*, her seven month delay in reporting the assaults. Defense counsel questioned CW about this delay in cross-examination. In closing, defense counsel argued that the seven month delay in reporting was "devastating for [the State's] case and for [CW's] credibility." CW's testimony explaining the circumstances and reasons for the delay was specifically offered to counter one of Bekkum's primary arguments attacking CW's credibility. This testimony was not adduced to improperly bolster the CW's general credibility or her factual allegations. Cf. Lora, 147 Hawai'i at 309, 465 P.3d at 756 (rejecting approach that would permit admissibility of impacts of an alleged offense on a complaining witness to bolster the witness's general credibility).

Therefore, we conclude that the State's introduction of this evidence did not amount to prosecutorial misconduct.

Second, Bekkum argues that the following statement made by the State's counsel in closing argument constituted an improper golden rule argument that sought to evoke an emotional reaction from the jury and asked it to become an advocate for CW:

The State asks that you take a stand with [CW], that you recognize the traumas and fears and the harm inflicted by this defendant, and that you find this defendant guilty of two counts of Sexual Assault in the Fourth Degree.

Bekkum's trial counsel did not object to these remarks. We nevertheless must determine whether the alleged misconduct constituted plain error that affected Bekkum's substantial rights. See Iuli, 101 Hawai'i at 208, 65 P.3d at 155.

It is well established that "golden rule" arguments are improper:

Under a typical "golden rule" argument, "a lawyer asks the jurors to reach a verdict by imagining themselves or someone they care about in the place of the injured plaintiff or crime victim." Golden-rule argument, Black's Law Dictionary 807 (10th ed. 2014). These arguments are widely condemned in both civil and criminal cases because they "ask the jurors to become advocates for the plaintiff or victim and to ignore their obligation to exercise calm and reasonable judgment[.]"

State v. Kauhane, 145 Hawai'i 362, 373, 452 P.3d 359, 370 (2019). Examples of improper golden rule arguments include "I say we teach [the complaining witness] that there is justice in the world," asking the jury to "send a message to the community that [the defendant's] actions were wrong and would not be tolerated," and "[t]his community is measured by how we treat its weakest members." State v. Conroy, 148 Hawai'i 194, 202-03, 468 P.3d 208, 216-17 (2020) (citations omitted).

Here, asking the jury to "take a stand with [CW]" invited the jury to base its verdict on considerations other than

the evidence in the case. See id. Accordingly, the DPA's remark improperly appealed to the jury's emotions.

Prosecutorial misconduct warrants a new trial or the setting aside of a guilty verdict where the actions of the prosecutor have caused prejudice to the defendant's right to a fair trial. State v. Austin, 143 Hawai'i 18, 39, 422 P.3d 18, 39 (2018).

Here, as misconduct has been established, we must address the promptness or lack of a curative instruction and the strength or weakness of the evidence against Bekkum to determine whether there is a reasonable possibility that the conduct might have affected the trial's outcome. See State v. Cardona, 155 Hawai'i 23, 39, 556 P.3d 369, 385 (2024). If so, the misconduct is not harmless beyond a reasonable doubt, and we must vacate Bekkum's conviction. See id. There was no objection at trial and no curative instruction given. As the case turned on CW's testimony concerning Bekkum's alleged conduct, asking the jury to stand with CW, rather than to decide the case based on the evidence presented, might have affected the guilty verdict. See id. at 39-40, 556 P.3d at 385-86 (where prosecutorial misconduct prejudiced the defendant's right to a fair trial and might have affected the outcome, it was not harmless beyond a reasonable doubt). Accordingly, the prosecutorial misconduct was not harmless beyond a reasonable doubt.

On this basis, we vacate Bekkum's conviction.

(3) Bekkum argues ineffective assistance of counsel on two grounds: (1) defense counsel's purported failure to object to admission of various text and Facebook messages; and (2)

defense counsel's decision to not call Janet Six (**Six**) as a negative character witness to establish that CW had a reputation for untruthfulness.

The Circuit Court found and the record supports that defense counsel's failure to oppose the admission of the messages between Bekkum and CW was a tactical decision. Defense counsel referenced the messages in his opening statement, pointing to them to show that Bekkum had a "crush" on CW, but "[t]hat's not a crime." Defense counsel cross-examined CW extensively about the messages, eliciting testimony that CW and Bekkum continued to message after the assaults and that CW never said anything about the alleged sexual assaults to Bekkum in these messages - evidence from which a factfinder could have inferred that Bekkum's contact with CW was not without consent. In closing argument, defense counsel argued: "Text messages, I have my doubts that they proved anything except they were in a flirtatious banter among friends, a changing relationship," and highlighted that CW never mentioned the alleged assaults in her messages with Bekkum. Accordingly, the Circuit Court did not clearly err in finding that counsel's decision not to oppose the admission of these messages was clearly a tactical one. See State v. DeLeon, 131 Hawai'i 463, 479, 319 P.3d 382, 398 (2014) ("Specific actions or omissions alleged to be error but which had an obvious tactical basis for benefitting the defendant's case will not be subject to further scrutiny."). Therefore, the Circuit Court did not err in concluding that this tactical

decision did not constitute ineffective assistance of counsel warranting a new trial.⁴

Bekkum also argues that defense counsel was ineffective because he did not call Six as a witness. With the motion for new trial, Bekkum submitted a declaration stating that he asked defense counsel to call Six as a witness, along with a screen shot of a text from Bekkum's wife to counsel saying Six could "open [a] can of worms" regarding CW's history of being a "vindictive/non-truthful individual." Bekkum also submitted a declaration of Six, in which she stated that when she lived in Hana, she learned of CW's reputation for having a character of untruthfulness. At the hearing on Bekkum's motion for new trial, new counsel submitted that defense counsel did not call Six as a witness because he thought she was "a loose cannon" and "unpredictable" and asked the Circuit Court to exercise its discretion to grant a new trial based on defense counsel's failure to call Six as a witness. The Circuit Court allowed new counsel to elicit live (telephonic) testimony from Six and the court examined Six at the hearing. It was clear from her testimony that defense counsel had explored the possibility of calling her as a witness, they met, and they had discussions about CW. The Circuit Court found that the decision not to call Six was a tactical one, and not ineffective assistance warranting a new trial. Upon review, we cannot conclude that the Circuit

⁴ Also, the Circuit Court concluded at the continued hearing on the motion for new trial that the messages constituted non-hearsay admissions by a party opponent. See HRE Rule 803(a)(1). Bekkum does not argue otherwise on appeal.

Court abused its discretion in denying Bekkum's motion for new trial based on ineffective assistance of defense counsel on this ground.

(4) Bekkum further argues that the Circuit Court erred in denying his motion for a new trial to allow "newly discovered evidence" in the form of testimony from Bekkum's daughter, Kiki Bekkum (**Kiki**). In conjunction with the motion for new trial, Kiki declared that during both alleged incidents of sexual assault, she was in Bekkum's car, had a clear view of CW's yard and house, and noticed multiple inconsistencies in CW's testimony compared to her observations of CW and Bekkum.

A motion for new trial based on newly discovered evidence will be granted only if all of the following requirements have been satisfied: (1) the evidence has been discovered after trial; (2) such evidence could not have been discovered before or at trial through the exercise of due diligence; (3) the evidence is material to the issues and not cumulative or offered solely for purposes of impeachment; and (4) the evidence is of such a nature as would probably change the result of a later trial.

State v. Stone, 147 Hawai'i 255, 258 n.3, 465 P.3d 702, 705 n.3

(2020) (citation omitted). Bekkum does not challenge or otherwise address the Circuit Court's finding that the purportedly newly discovered evidence was "just old, ignored evidence" and could not be a "basis to grant a new trial." Accordingly, we conclude that the Circuit Court did not abuse its discretion in determining that Kiki's testimony did not warrant a new trial.

Based on our ruling that there was prosecutorial misconduct committed in closing argument, and the prosecutorial misconduct was not harmless beyond a reasonable doubt, the Circuit Court's November 3, 2022 Judgment is vacated and this

case is remanded to the Circuit Court for further proceedings consistent with this Summary Disposition Order.

DATED: Honolulu, Hawai'i, October 12, 2026.

On the briefs:

/s/ Karen T. Nakasone
Chief Judge

Hayden Aluli,
for Defendant-Appellant.

/s/ Katherine G. Leonard
Associate Judge

Richard Rost,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

/s/ Kimberly T. Guidry
Associate Judge