

DISSENTING OPINION BY LEONARD, J.

I respectfully dissent because, viewing the evidence in the light most favorable to the prosecution, there is insufficient evidence to support the conviction of Defendant-Appellant Karen A. Oshiro (**Oshiro**) of Harassment under Hawaii Revised Statutes (HRS) § 711-1106(1)(b) and/or (1)(f) (Supp. 2010).

HRS § 711-1106(1)(b) is "aimed at preserving peace. It prohibits insults, taunts, or challenges which are likely to provoke a violent or disorderly response." In re Doe, 76 Hawai'i 85, 91, 869 P.2d 1304, 1310 (1994) (emphasis in original). Oshiro's comments may have been vulgar and rude, but cannot be considered insults, taunts, or challenges likely to provoke an immediate violent or disorderly response under the circumstances of this case, which included, *inter alia*, the positioning of a physical barrier, *i.e.* a fence, between Oshiro and her neighbor.

To sustain Oshiro's conviction under HRS § 711-1106(1)(f), we must conclude that the record contains substantial evidence which is of sufficient quality and probative value to enable a person of reasonable caution to reach the conclusion that Oshiro's "communication using offensively coarse language" would "cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another." HRS § 711-1106(1)(f). There is no evidence that Oshiro was intentionally communicating with her neighbor when the neighbor heard Oshiro say "I can knock the fuckin' bitch down." Indeed, the neighbor testified that she overheard Oshiro make this statement to Oshiro's son in response to a question posed by Oshiro's son to Oshiro. The neighbor testified repeatedly that Oshiro's remarks did not cause her to be afraid that Oshiro would cause her injury; rather, the neighbor feared that Oshiro's son would get

involved. There is no evidence that the son got involved or in any way communicated or interacted with the neighbor during the incident. Moreover, although there is testimony that Oshiro was trimming or pulling on the neighbor's curry tree that was located near their common fence immediately *prior to* the allegedly harassing encounter, there is no evidence whatsoever that Oshiro's "offensively coarse" statement caused the neighbor to reasonably believe that Oshiro intended to cause injury (or further injury) to the neighbor's curry tree.

Accordingly, I would reverse the District Court's September 22, 2010 judgment.