

Electronically Filed  
Supreme Court  
SCWC-30186  
28-FEB-2014  
02:38 PM

IN THE SUPREME COURT OF THE STATE OF HAWAII

---o0o---

---

STATE OF HAWAII,  
Respondent/Plaintiff-Appellant,

vs.

HERMAN DECOITE,  
Petitioner/Defendant-Appellee.

---

SCWC-30186

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(ICA NO. 30186; FC-CR NO. 09-1-0127(4))

FEBRUARY 28, 2014

CONCURRING OPINION BY ACOBA, J.

A statute permits charging conduct as a continuing course of conduct if the crime is "statutorily defined as an uninterrupted and continuing course of conduct, or manifests a plain legislative purpose to be treated as such, or both." State v. Arceo, 81 Hawai'i 1, 9, 928 P.2d 843, 861 (1996). Here, Petitioner/Defendant-Appellee's Herman Decoite (Petitioner) was charged with physical abuse of a household or family member. Pursuant to HRS 709-906(1), it is "unlawful for any person . . .

to physically abuse a family or household member." "Physically abuse" is defined as "to maltreat in such a manner as to cause injury, hurt, or damage to that person's body[.]" State v. Nomura, 79 Hawai'i 413, 416, 903 P.2d 718, 721 (App. 1995). Thus, it is apparent that the legislature intended that each individual act of physical abuse, i.e., each act done with a separate intent to cause injury, hurt or damage to another person, see State v. Martin, 62 Haw. 364, 368, 616 P.2d 193, 196 (1980), would be a separate offense, rather than a continuing course of conduct.

It has been explained that "the applicable test in determining whether there is a continuing crime [i.e., a criminal act] is whether the evidence discloses one general intent or discloses separate and distinct intents. . . . [I]f there is but one intention, one general impulse, and one plan, even though there is a series of transactions, there is but one offense." Martin, 62 Haw. at 368, 616 P.2d at 196 (internal quotation marks and citations omitted). Whether two acts were committed with "separate and distinct intents" must be determined on a case-by-case basis, under the facts presented in any specific case. It is not possible to determine that two actions did not constitute a continuing course of conduct based solely on the amount of time separating the two acts.

Under the circumstances presented here, it is apparent that Petitioner committed two discrete acts of physical abuse. Consequently, under the facts of this case, the conduct of Petitioner did not constitute a continuing course of conduct. I therefore concur in the result vacating the decision of the Intermediate Court of Appeals and affirming the decision of the Family court of the First Circuit dismissing the complaint against Petitioner without prejudice.

/s/ Simeon R. Acoba, Jr.

