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Intermediate Court of Appeals
CAAP-14-0000440
07-APR-2016
08:30 AM

NO. CAAP-14-0000440

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DAVID SHINN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. 1DCW-13-0005538)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Reifurth, and Ginoza, JJ.)

Defendant-Appellant David Shinn (**Shinn**) appeals from the Notice of Entry of Judgment and/or Order, entered on January 27, 2014 by the District Court of the First Circuit¹ (**district court**).

On appeal, Shinn contends the district court erred in convicting him, because there was insufficient evidence that he committed harassment under Hawaii Revised Statutes (**HRS**) § 711-1106(a) (2014 Repl.).

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 by the parties, as well as the relevant statutory and case law, we conclude Shinn's appeal is without merit.

(1) Shinn argues that there was insufficient evidence to convict him of harassment because Plaintiff-Appellee State of Hawaii (**State**) did not establish that he had the intent to touch in an offensive manner and that he acted with the specific intent

¹ The Honorable Linda K.C. Luke presided.

to "harass, annoy, or alarm" Honolulu Police Department Officer Eric Hokama (**Officer Hokama**) as required under HRS § 711-1106(1).

"[E]vidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction[.]" State v. Matavale, 115 Hawai'i 149, 157, 166 P.3d 322, 330 (2007). "'Substantial evidence' as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Id. (brackets omitted) (quoting State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992)).

It is for the trial judge as fact-finder to assess the credibility of witnesses and to resolve all questions of fact; the judge may accept or reject any witness's testimony in whole or in part. Lono v. State, 63 Haw. 470, 473, 629 P.2d 630, 633 (1981). As the trier of fact, the judge may draw all reasonable and legitimate inferences and deductions from the evidence, and the findings of the trial court will not be disturbed unless clearly erroneous. Id. at 473-74, 629 P.2d at 633. An appellate court will not pass upon the trial judge's decisions with respect to the credibility of witnesses and the weight of the evidence, because this is the province of the trial judge.

State v. Eastman, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996).

According to Officer Hokama, who was responding to a call by Shinn for assistance at Straub Clinic & Hospital, Shinn started pushing him after a conversation they had regarding the level of care Shinn's hospitalized mother was receiving. Shinn stepped between Officer Hokama and the doctor and started pushing Officer Hokama and poking him in the chest. Officer Hokama testified that he did not give Shinn permission to touch him, and that he responded by telling Shinn to step back. After Shinn poked or pushed him again, Officer Hokama said, "You know what? You gotta stop." Officer Hokama testified that Shinn started yelling and when Officer Hokama escorted Shinn back to his mother's room so that he could talk to the doctor, Shinn grabbed the right sleeve of Officer Hokama's uniform. Officer Hokama told Shinn, "Stop, you're under arrest for harassment already," and proceeded to handcuff Shinn.

The nurse taking care of Shinn's mother (**Nurse**) testified that she witnessed Shinn touch Officer Hokama after he

"started to yell" The Nurse described Shinn as "upset", "yelling", and "raising his arms up in the air." While the Nurse testified that she witnessed Shinn touching Officer Hokama only once prior to the arrest, she also stated that she was looking after Shinn's mother. Accordingly, one could reasonably infer that the Nurse did not witness the interaction outside of the room between Officer Hokama and Shinn. However, the Nurse testified that she witnessed Shinn touch Officer Hokama in the room, and that Officer Hokama warned Shinn that it was the second time Shinn had touched him.

The testimony of Officer Hokama and the Nurse constituted substantial evidence that Shinn touched Officer Hokama "in an offensive manner" under HRS § 711-1106(1)(a). See State v. Sanchez, 9 Haw. App. 315, 323, 837 P.2d 1313, 1318 (1992) (holding that substantial evidence supported the trial court's finding that the defendant touched police officer and subjected the police officer to offensive physical contact, when officers testified that the defendant pushed the police officer).

(2) Shinn argues that the State failed to establish that Shinn acted with the specific intent to "harass, annoy, or alarm" Officer Hokama as required under HRS § 711-1106(1)(a). Shinn disagrees with the district court's statement at trial that intent could be inferred from Shinn's actions in persisting to interrupt the officer and asserts that Shinn's intent was his concern for his mother.

"[I]t is an elementary principle of law that intent may be proved by circumstantial evidence; that the element of intent can rarely be shown by direct evidence; and it may be shown by a reasonable inference arising from the circumstances surrounding the act." State v. Hopkins, 60 Haw. 540, 544, 592 P.2d 810, 812 13 (1979) (brackets and internal quotation marks omitted) (quoting State v. Yabusaki, 58 Haw. 404, 409, 570 P.2d 844, 847 (1977)).

While Officer Hokama, the Nurse, and Shinn testified that Shinn was initially concerned for his mother, the testimony also demonstrated that Shinn's intent shifted after Officer Hokama's arrival. Officer Hokama testified that Shinn followed

him into the hallway and started yelling at him when Officer Hokama was speaking with the doctor. Shinn stepped between Officer Hokama and the doctor and started poking Officer Hokama in the chest and pushing him. Officer Hokama asked Shinn to stop and step back, and warned him that he could be arrested for harassment. Officer Hokama testified that Shinn "kept interrupting" his duties. Similarly, the Nurse testified that Officer Hokama told Shinn to stop touching him, but Shinn continued to do so. Shinn himself testified that Officer Hokama told him not to touch him.

Viewed in the light most favorable to the State, it can be reasonably inferred from the circumstances surrounding the incident that Shinn intended to "harass, annoy, or alarm" Officer Hokama.

Therefore,

IT IS HEREBY ORDERED that the January 27, 2014 Notice of Entry of Judgment and/or Order, entered in the District Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 7, 2016.

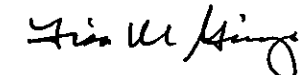
On the briefs:

Jessica R. Domingo
Deputy Public Defender
for Defendant-Appellant.

Brian R. Vincent
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee.


Presiding Judge


Associate Judge


Associate Judge