

NO. CAAP-15-0000051

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JULIAN MANCE, aka Julian M. Mance, and
Julian Marcus Mance, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(CASE NO. 2DCW-14-0001497)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Julian Marcus Mance appeals from a Notice of Entry of Judgment and/or Order ("Judgment"), entered on January 2, 2015, in the District Court of the Second Circuit, Wailuku Division ("District Court").¹ The District Court convicted Mance of Harassment, in violation of Hawaii Revised Statutes ("HRS") § 711-1106(1)(b).² On appeal, Mance argues that

^{1/} The Honorable Adrienne N. Heely presided.

^{2/} HRS § 711-1106(1)(b) (2014) provides in relevant part:

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

. . . .

(b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another[.]

the District Court erred in convicting him based on evidence that was insufficient to enable a person of reasonable caution to reach a conclusion that he insulted, taunted or challenged the complaining witness ("CW") with the intent to harass, annoy or alarm her, in a manner likely to either provoke her immediate violent response or cause her to reasonably believe that he intended to cause her bodily injury. Mance asks that we vacate the Judgment and reverse the conviction.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments they advance and the issues they raise, we resolve Mance's points of error as follows, and affirm.

"When a conviction is challenged based on the sufficiency of the evidence, the test on appeal is not whether guilt is established beyond a reasonable doubt" or whether we might have decided differently if presented with what we understand to be the same facts, "but whether there was substantial evidence to support the conclusion of the trier of fact." *State v. Griffin*, 126 Hawai'i 40, 56, 266 P.3d 448, 464 (App. 2011) (quoting *State v. Richie*, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998)) (internal quotation marks omitted). "Substantial evidence is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." *Id.* (internal quotation marks and ellipsis omitted). Thus, "even if it could be said . . . that the conviction is against the weight of the evidence, as long as there is [credible evidence of sufficient quality and probative value to enable a person of reasonable caution to make] the requisite findings for conviction, the trial court will be affirmed." *State v. Eastman*, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996) (quoting *State v. Pone*, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995)).

To prove that Mance harassed the CW, Plaintiff-Appellee State of Hawai'i had to show that Mance, (i) "with intent to harass, annoy, or alarm" the CW, (ii) "[i]nsult[ed], taunt[ed], or challenge[d]" the CW (iii) "in a manner . . . that would cause

[the CW] to reasonably believe that [Mance] intend[ed] to cause [her] bodily injury" Haw. Rev. Stat. § 711-1106(1)(b). On appeal, Mance appears to challenge the District Court's ruling for two reasons. First, Mance argues that the District Court's apparent conclusion that he intended to cause bodily harm was wrong because it directly conflicted with the court's finding that "[h]e had no intent to cause bodily harm." Upon review of the court's findings as a whole, however, it is clear that the court merely summarized Mance's own testimony that he did not intend to cause bodily harm in the finding that Mance cites. The record demonstrates that this summary accurately reflects Mance's words, so we leave it undisturbed.

Second, Mance appears to argue that the District Court failed to make a required finding that he had the intent to harass, annoy, or alarm the CW. Based on the evidence adduced at trial as to Mance's "acts, conduct, and . . . all the circumstances" of the event in question, however, we disagree. *State v. Stocker*, 90 Hawai'i 85, 92, 976 P.2d 399, 406 (1999) (quoting *State v. Mitsuda*, 86 Hawai'i 37, 44, 947 P.2d 349, 356 (1997)). For example, Cindy Manzano, an outreach worker at the Family Life Center ("Center"), where the incident in question took place, testified about circumstances of the incident. Manzano recalled that Mance, a Center client, looked agitated when he entered the facility on June 4, 2014.³ As to Mance's conduct, the CW, who is also an outreach worker at the Center and who served Mance's food that day, testified that when she handed Mance's pizza to him across the two-foot-wide counter, he said "FU, B-I-T-C-H" to her. According to Manzano, who overheard Mance's epithet, Mance clearly had not been talking to her, so Manzano guessed that Mance must have been speaking to the CW, who was the only other person working in the area at the time.⁴ The

^{3/} Maui Police Officer Taylor Kamakawiwo'ole also testified that Mance appeared a little "agitated" and "worked up" when Officer Kamakawiwo'ole arrived on the scene.

^{4/} At the time of the incident, Mance, who was about six feet, three or four inches tall, also admitted to making the comment within earshot of the CW (although he contended that he had been speaking to someone else at the time).

CW and Manzano's testimony thus sufficiently support the court's finding that Mance directed a threatening statement towards the CW. See *Griffin*, 126 Hawai'i at 56, 266 P.3d at 464.

Furthermore, despite Mance's emphasis on the fact that he did not step towards the CW, lunge at her, extend his hands toward her, nor ball his fists or swing at her, it was the District Court's prerogative as fact finder to determine the credibility of the witnesses, to weigh the evidence, and to make all reasonable and rational inferences therefrom. *State v. Mitchell*, 94 Hawai'i 388, 393, 15 P.3d 314, 319 (App. 2000) (citing *State v. Gabrillo*, 10 Haw. App. 448, 457, 877 P.2d 891, 895 (1994)). The CW testified that she was "frightened" by Mance's actions and "scared" because she thought he was going to come back and "it was going to get worse and worse." In fact, after confronting the CW and Manzano, Mance proceeded to the Center's front office, "and started an uproar there, using the same language." Front office personnel asked Manzano to leave and, together with the CW, decided to call 911. In light of the CW's credible testimony, the circumstances surrounding the incident, the fact that the CW and Mance had previously had a "very close" relationship, and the CW's "shaken" demeanor when police officers arrived at the scene, there was sufficient evidence that Mance acted in a manner that would cause the CW to reasonably believe that Mance intended to cause her bodily injury.

Because "the mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances[,] " *Stocker*, 90 Hawai'i at 92, 976 P.2d at 406 (quoting *Mitsuda*, 86 Hawai'i at 44, 947 P.2d at 356), the above-summarized trial testimony-when viewed in the light most favorable to the State, *Griffin*, 126 Hawai'i at 56, 266 P.3d at 464 (quoting *Eastman*, 81 Hawai'i at 135, 913 P.2d at 61)), also supports the inference that Mance acted with the "intent to harass, annoy, or alarm" the CW, Haw. Rev. Stat. § 711-1106(1). As such, we hold that there was sufficient evidence to support Mance's conviction.

Therefore, IT IS HEREBY ORDERED that the Judgment filed on January 2, 2015, in the District Court of the Second Circuit, Wailuku Division, is affirmed.

DATED: Honolulu, Hawai'i, March 31, 2016.

On the briefs:

Phyllis J. Hironaka,
Deputy Public Defender,
for Defendant-Appellant.

Presiding Judge

Artemio C. Baxa,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

Associate Judge

Associate Judge