

NO. CAAP-14-0000860

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JEROME A. PAYNE, ALSO KNOWN AS
HAROLD J. COLLINS II, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 13-1-0621(3))

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant Jerome A. Payne aka Harold J. Collins, II (**Payne**) appeals from the Judgment, Conviction and Probation Sentence (**Judgment**) filed on April 29, 2014, in the Circuit Court of the Second Circuit (**Circuit Court**).¹ Following a jury trial, Payne was found guilty of Assault Against a Law Enforcement Officer in the First Degree, Hawaii Revised Statutes

¹

The Honorable Joseph E. Cardoza presided.

(HRS) § 707-712.5(1)(a) (2014).² Payne was sentenced to five years probation and 250 days of jail as a special condition.

Payne raises a single point of error on appeal, contending that there was insufficient evidence for the jury to find that Payne intentionally or knowingly caused bodily injury to Maui Police Department (**MPD**) Officer Craig Stephens (**Officer Stephens**).

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, we resolve Payne's point of error as follows:

The Hawai'i Supreme Court has long held that:

[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; the same standard applies whether the case was before a judge or a jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed.

"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. And as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence.

State v. Matavale, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007) (citation and brackets omitted).

² **§707-712.5 Assault against a law enforcement officer in the first degree.** (1) A person commits the offense of assault against a law enforcement officer in the first degree if the person:

(a) Intentionally or knowingly causes bodily injury to a law enforcement officer who is engaged in the performance of duty[.]

Additionally, the supreme court has recognized that "[g]iven the difficulty of proving the requisite state of mind by direct evidence in criminal cases, proof of circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient." State v. Eastman, 81 Hawai'i 131, 141, 913 P.2d 57, 68 (1996) (citation omitted). "The mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances." Id. (citation omitted). Moreover, "appellate courts will give due deference to the right of the trier of fact 'to determine credibility, weigh the evidence, and draw reasonable inferences from the evidence adduced.'" State v. Agard, 113 Hawai'i 321, 324, 151 P.3d 802, 805 (2007) (quoting In re Doe, 107 Hawai'i 12, 19, 108 P.3d 966, 973 (2005)).

In order to convict Payne of Assault Against a Law Enforcement Officer in the First Degree, the State was required to present substantial evidence that he intentionally or knowingly caused bodily injury to Officer Stephens, a law enforcement officer who was engaged in the performance of duty. HRS §§ 707-712.5(1)(a), 702-206 (2014).³ On appeal, Payne argues

³ **§702-206 Definitions of states of mind.** (1) "Intentionally."
(a) A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.
(b) A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes or hopes that they exist.
(c) A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.
(2) "Knowingly."
(a) A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.
(continued...)

that the "evidence adduced at trial is not of any sufficiency to support the state of mind necessary under the statute to find either intentional or knowing activity." We disagree.

The State elicited testimony from airport district manager for the Maui Airports, Marvin Moniz (**Moniz**), Officer Stephens, and MPD Officer Grant Nakamura (**Officer Nakamura**).

On August 21, 2013, Moniz observed Payne sitting on a planter box near the baggage claim area of the Kahului airport. Moniz observed Payne smoking cigarettes in a no-smoking area. Moniz testified that when MPD Officers asked Payne "if he needed help or if he needed anything and how he was doing, and he just told them, you know, 'Fuck you,' and that was it." Moniz described Payne's tone as "snappy" and louder than normal. Moniz testified that MPD Officers asked Payne "to stand up so they could put the handcuffs on him, and he said no, and then shaking his arms trying to not get the handcuffs on." Moniz stated that "when [MPD] finally got the cuffs snapped -- was snapping the cuffs, and [Payne] reached over and bent over and bit [Officer Stephens] on the hand[.]" Moniz testified that he called the custodial department "to bring some sanitation wipes so [Officer Stephens] can wipe his hand from the blood and the bite[.]"

Officer Stephens testified that he arrived at Kahului airport at approximately 5:25 p.m. on August 21, 2013. Officer

³(...continued)

- (b) A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.
- (c) A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

Stephens approached Payne, introduced himself as an officer with the MPD, and asked Payne for his identification. Payne responded "Fuck you. You figure it out." Officer Stephens testified that he "again asked [Payne] *I need some type of identification. What's your name? If you don't have identification, give me your name, date of birth.*" Payne again responded "Fuck you. You figure it out." Officer Stephens informed Payne that he "needed to move along, and if he wasn't going to move along, he was going to be placed under arrest." Payne responded in an angry voice, "*I ain't going anywhere.*" When Officer Stephens removed his handcuffs from his duty belt, Payne stated "*You ain't putting those on me.*" Officer Stephens told Payne he was under arrest, and grabbed Payne's arm. Officer Stephens testified that the "minute I grabbed his arm, Officer Nakamura, I believe, went to grab his other arm, and then he pulled away, so I informed him stop resisting, went to grab his arm again, and then we fell backwards that the planter." Officer Stephens stated:

[A]s I was trying to grab his arm, at some point, I felt pain in my hand, my left hand, and I looked down, and he was biting on to my hand. And then I immediately pulled my hand from his mouth, and I said, 'Hey, don't bite me.' And I told Officer Nakamura that he's biting.

Officer Stephens observed Payne trying to bite Officer Nakamura's leg. Officer Stephens struck Payne three times with a closed fist on the side of his face to prevent him from biting Officer Nakamura's leg. Officer Nakamura removed his taser, and told Payne that "if he didn't stop resisting, he was going to get tasered." Payne then stopped resisting. Officer Stephens and Officer Nakamura handcuffed Payne and placed him in a seated

position. Officer Stephens testified that "[w]hen [Payne] was sitting up, Officer Nakamura was leaning over him, and he spit up into Officer Nakamura's face." Officer Stephens related that Payne's bite left two puncture marks near the "web" between his left thumb and pointer finger. Officer Stephens testified that he noticed blood on his left hand. Officer Stephens related that his hand was sore for a couple of days.

Officer Nakamura testified that he arrived at the Kahului airport at approximately 5:20 p.m. on August 21, 2013. Officer Nakamura related that after Officer Stephens informed Payne that he was under arrest, Payne began swearing in a loud tone of voice. Officer Nakamura testified that "Officer Stephens then grabbed [Payne's] left hand, and I grabbed [Payne's] right hand to put him in cuffs, and then [Payne] began fighting with us." Officer Nakamura further testified that he "tried to gain compliance by grabbing [Payne's] hands and securing his arms, but he was swinging and kicking wildly at us." Officer Nakamura observed Payne bite Officer Stephens's left hand. Officer Nakamura testified that Payne tried to bite his leg a couple times. Officer Nakamura removed his taser, "pointed it at [Payne's] chest and gave him verbal commands to stop resist[ing]." Payne complied with Officer Nakamura's commands. After Payne was placed in handcuffs, he spit directly into Officer Nakamura's face.

Based on the testimony of Moniz, Officer Stephens, and Officer Nakamura, and a photograph admitted into evidence depicting the puncture marks on Officer Stephens's left hand, the

jury could reasonably infer that Payne intentionally or knowingly caused bodily injury to Officer Stephens. Viewing the evidence in the light most favorable to the prosecution, with the fact finder determining credibility, the State presented substantial evidence that Payne committed the offense of Assault Against a Law Enforcement Officer in the First Degree.

For these reasons, the Circuit Court's April 29, 2014 Judgment is affirmed.

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

On the briefs:

Ben C. Summit,
(Summit Law Offices)
for Defendant-Appellant.

Presiding Judge

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

Associate Judge

Associate Judge