

NO. 23272

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
LARISSA GOROSPE, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 99-0833)

MEMORANDUM OPINION

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Defendant-Appellant Larissa Gorospe (Gorospe) appeals the February 15, 2000, Judgment of Probation of the Family Court of the Second Circuit (trial court), which found Gorospe guilty of one count of Abuse of Family Household Member [sic], pursuant to Hawai'i Revised Statutes (HRS) § 709-906 (Supp. 2000).¹ The trial court sentenced Gorospe to forty-eight hours incarceration with twenty-four hours credit given for time served and one year probation, assessed a \$50.00 Criminal Injuries Compensation fee, and ordered Gorospe to contact the Family Peace Center within

¹ HRS § 709-906 provides, in relevant part, as follows:

§709-906 Abuse of family or household members; penalty.

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member

For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

seven days to schedule a program intake interview. On appeal, Gorospe contends that insufficient evidence was adduced at trial to rebut her justification defense pursuant to HRS § 703-304 (1993).² We disagree with Gorospe's contentions and affirm the February 15, 2000, Judgment of Probation.

I. BACKGROUND

On December 22, 1999, Gorospe was charged by complaint with one count of Abuse of Family and [sic] Household Member, in violation of HRS § 709-906. A jury-waived trial was held on February 15, 2000, where the following evidence was adduced.

² HRS § 703-304 provides, in relevant part, as follows:

§703-304 Use of force in self-protection. (1) Subject to the provisions of this section and of section 703-308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

HRS § 703-300 (1993) provides, in relevant part, as follows:

§703-300 Definitions relating to justification. In this chapter, unless a different meaning is plainly required:

"Believes" means reasonably believes.

. . . .

"Force" means any bodily impact, restraint, or confinement, or the threat thereof.

"Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.

On December 21, 1999, Gorospe lived in Kihei, Maui, with her husband Teddy Gorospe (Teddy) and their six-year-old son. Teddy testified that Gorospe returned home at approximately two or three o'clock in the afternoon and found him at home by himself under the influence of crystal methamphetamine. He believed Gorospe was angry, and she told him she planned to serve him with a temporary restraining order (TRO). He felt like he had lost everything he ever worked for and became upset. When asked whether Gorospe explained why she was getting the TRO, he stated that he "didn't give her the chance."

Teddy testified that outside their house on the patio, he began spitting in Gorospe's face. He spit in her face about five or six times. While he was spitting at Gorospe, she told him to stop and slapped him a couple of times on the back of his shoulders. He turned away from Gorospe to block her slaps. He testified that the slaps caused him pain.

Teddy testified that from where they were standing near the stairs, Gorospe could have "gone down" in order to "walk away" from him while he was spitting on her. He started spitting at Gorospe before she slapped him the first time. After he stopped spitting at her, he was facing toward the stairs. He made no movements toward Gorospe, who was standing behind him. Gorospe then pushed on his shoulders, causing him to fall down

about five stairs. He scraped his foot on the stairs, causing it to sting and bleed a little.

Teddy testified that after falling down five stairs, he chased Gorospe around the house. He couldn't catch Gorospe. He then turned drawers upside down in the house and "started messing the whole place up."

Under cross-examination, Teddy testified that he did not fall down the stairs, but rather momentarily lost his balance when Gorospe shoved him. He stated that in addition to emptying out dresser drawers and throwing their contents around, he also knocked over other pieces of furniture. He described himself as in a rage. Gorospe called the police. When the police arrived, Teddy gave them a statement and showed them the scrape on his foot.

Gorospe testified that she wanted to talk to Teddy when she came home on the day this incident occurred. When she told him that she wanted to talk to him, he looked very upset. When she began talking to him, "he started like cussing under his breath, you know, swearing." When she started to explain what she was going to do, he started to spit in her face. Gorospe asked him why he was doing that. She stated that she was "trying to be civil," trying to explain the type of TRO she "wanted to make on him." She testified that she had not applied for the TRO but had gotten the paperwork all drawn up. She didn't want him

to be served with a TRO and all of a sudden "just lose his family." She felt she had to be civil to him and explain to him that her reason for getting the TRO was because he was using illegal substances and they were having a lot of problems. She hoped Teddy would realize that he badly needed to get help.

Under cross-examination, Gorospe testified that she hit Teddy because he kept spitting at her. She did not walk away from Teddy because she wanted to talk to him. She had to talk to him that afternoon because she planned to file the TRO papers that afternoon. She wanted him to understand that she was serious about his need to seek counseling. She testified that she was blocked from walking away from him both because of their position at the top of the stairs and the position of a shoe rack and weight bench on her deck. In addition to spitting at her, Teddy made gestures back toward her "trying to scare [her] away from him." She stated that at some point he had his back partially to her and was swearing at her. Teddy was putting on slippers and holding on to the railing. She "felt pretty threatened." She stated that Teddy moved "sudden -- like, you know, jerk for turn around, you know." She then pushed him, causing him to trip down the stairs. Immediately before she pushed him, Teddy was putting on his slippers and swearing at her. Gorospe stated that Teddy "made like a jerk, a sudden jerk. And I thought he was going to swing around and do something to

me, you know. And I just wanted him to talk to me." While Teddy never laid a hand on her that day, she testified that he "kind of jerked my hands away, and he made a moving gesture" and "threatening gestures toward [her]."

The court found that the State established the material elements finding Gorospe in violation of HRS § 709-906. The trial court made the following specific findings:

What I find here is that Mr. Gorospe, by spitting on her, did act in a way that was unlawful contact. O.K.? He did -- he didn't punch her or strike her, but spitting on her amounts to the same thing.

I think a person is justified in responding to being spit on to get that unlawful contact, that assaultive behavior, the spitting, going onto your right eye, you have the right to do something about that.

I think you are justified to therefore respond in self defense, or at least to get that conduct to stop as long as it is related to that purpose. And I made my findings that she -- when he spit and cussed at her, she was angry. And she said she even used some words. And she said she was cussing, too. She was very honest about it that [sic].

And she said at some point she went to slap him, and Mr. Gorospe also confirmed that. What I find is that he at some point stopped spitting, either at the time that she went to slap at him or after she slapped at him a couple of times. He had turned, and she was striking him on the back.

But what I find from the evidence is that stopped. Then there was a pause. There was a significant period of time where Mr. Gorospe at that point just turned. And it's clear from the evidence that he intended to go down the stairs. He was right at the top of the stairs. She then physically confronted and contacted him by shoving at him, not because she was afraid -- and I don't find her testimony to be very credible that he was making an action or jerking towards her such that that would be one in which anybody could easily infer that he was about to strike her.

He hadn't struck her up to that point in time, hadn't just done anything but just spit on her. When she started slapping him, he stopped spitting, turned kind of away so that the slaps were on his back. And at that point he was about to leave.

And she didn't want him to leave. She wanted to talk to him. And her testimony, I think, is quite credible that she wanted him to turn around, to confront him so that she could tell him what was going on, that he had to get ahold of his life because of what was happening.

And, in doing so, she shoved at him to get him to turn around, not because she was afraid or he was about to strike her or was, in fact, striking at her. But that wasn't her purpose. I don't find her testimony to be credible that she was in any fear of him turning around to hit her.

Her conduct at that point was reckless. She did not intend to shove him down the stairs, but she intended to shove him to get him to turn around. And a [sic] think that in that manner it was -- that is something that is reckless conduct because it can -- because they are at the top of the stairs next to the railing, and it caused him to receive some injuries. She shoved him hard enough that he lost his balance and stumbled down the stairs.

So it wasn't this ongoing conduct where he was spitting was still going and she shoved him to get him to stop the spitting. The spitting had stopped. And she slapped at him a couple of times. So he turned. And he wasn't really hurt, but he turned so they hit him in the back. And he turned away, just turning around, turned his back, and she shoved him.

And that was reckless conduct. And the statutes are pretty clear on that.

II. STANDARDS OF REVIEW

A. Sufficiency of the Evidence. In deciding whether to uphold the family court decision, we must review the evidence adduced in the family court "in the strongest light for the prosecution" when evaluating the "legal sufficiency of such evidence to support a conviction." State v. Batson, 73 Haw. 236, 248, 831 P.2d 924, 931, reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992). "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." 73 Haw. at 248, 831 P.2d at 931. "'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 man of reasonable caution to support a conclusion." 73 Haw. at 248-49, 831 P.2d at 931.

B. Trial Court's Findings of Fact. The standard of review applicable to a finding of fact is the clearly erroneous standard:

A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with the definite and firm conviction that a mistake has been made.

State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995) (internal quotation marks omitted).

C. Use of Force in Self-Protection. When a defendant invokes a justification defense, the situation must be viewed from the point of view of a reasonable person in the defendant's position, under the circumstances as he or she believed them to be. State v. Straub, 9 Haw. App. 435, 444-45, 843 P.2d 1389, 1394 (1993).

D. Disproving Defense. "The prosecution disproves a defense when it 'prove[s] beyond a reasonable doubt facts negating the defense.'" State v. Tanielu, 82 Hawai'i 373, 377, 922 P.2d 986, 990 (1996) (internal quotation marks omitted).

III. DISCUSSION

The issue on appeal is whether the trial court's decision is supported by substantial evidence. Specifically, the issue is whether the State met its burden of proving beyond a reasonable doubt that Gorospe's pushing of Teddy was not justified self-defense. In Straub, this court held:

Where the defense is justification, once evidence of a fact, or a set of facts, which negatives penal liability has been introduced, the burden is on the prosecution to disprove the facts that have been introduced or to prove facts negating the justification defense and to do so beyond a reasonable doubt.

9 Haw. App. at 444, 843 P.2d at 1393.

The trial court found that Gorospe did not reasonably believe her pushing of Teddy was immediately necessary to protect herself against his unlawful spitting. We hold the trial court's finding is supported by substantial evidence.

The trial court did not find Gorospe's testimony to be credible "that she was in any fear of him turning around to hit her." Gorospe testified that the "whole intention of me pushing him was to try and turn him to face me so I could talk to him." Gorospe testified that she did not walk away from Teddy because she "was so hurt that he didn't want to talk to me." There is substantial evidence to support the trial court's finding that when Teddy stopped spitting at Gorospe and turned around and held on to the railing while putting on his slippers, Gorospe did not reasonably believe that pushing Teddy was immediately necessary

to protect herself. To the extent that Gorospe may have actually believed that pushing Teddy was necessary for self-protection, there is substantial evidence that her belief was unreasonable.

IV. CONCLUSION

Accordingly, we affirm the trial court's February 15, 2000, Judgment of Probation.

DATED: Honolulu, Hawai'i, March 20, 2001.

On the briefs:

Georgia K. McMillen
for defendant-appellant.

Acting Chief Judge

Simone C. Polak,
Deputy Prosecuting Attorney,
County of Maui,
for plaintiff-appellee.

Associate Judge

Associate Judge