

NO. 23360

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
DOCTOR NUI LOA PRICE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(CR. NO. 99-178384)

MEMORANDUM OPINION

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

Defendant-Appellant Doctor Nui Loa Price (Price) appeals the February 22, 2000 Judgment entered by District Court Judge Barbara Richardson, convicting him of Criminal Property Damage in the Fourth Degree, Hawai'i Revised Statutes (HRS) § 708-823 (1993)<sup>1</sup>, as a lesser included offense of Criminal Property Damage in the Third Degree, HRS § 708-822 (1993). We affirm.

BACKGROUND

Price is an owner of real estate on the mauka-Haleiwa corner of the intersection of Pupukea Road and Kamehameha Highway. The address is 59-051 Pupukea Road. It appears that

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<sup>1</sup> Hawai'i Revised Statutes § 708-823 (1993) states as follows:

**Criminal property damage in the fourth degree.** (1) A person commits the offense of criminal property damage in the fourth degree if the person intentionally damages the property of another without the other's consent.

(2) Criminal property damage in the fourth degree is a petty misdemeanor.

Price wanted vehicles to be able to enter and exit his property where Plaintiff-Appellee State of Hawai'i (the State) did not allow vehicles to enter and exit from his property. After the Highways Division of the State of Hawai'i Department of Transportation (Highways Division) installed a 30-foot-long, 6-inch-high "AC Roll" curbing or "AC berm" around the Pupukea Road and Kamehameha Highway corner of Price's property, Price personally removed much of it.

Thomas Gabrielle (Gabrielle), an employee of the Highways Division, testified that he completed a work order in February of 1999 "to install an AC roll (sic), a curbing, on Kamehameha Highway entering on to Pupukea Road. It was to prevent access to and from that corner property for safety reasons." He further testified that "the berm was placed within the State highway right of way. As it made the turn mauka on to Pupukea Road, it entered City and County property. And, we did get permission from the City and County to extend that berm on to their property." Gabrielle added, "The berm actually belongs to the State highways."

Murray Shimose (Shimose), also an employee of the Highways Division, testified that he was present on May 24, 1999, when the road crew installed this "AC berm." He further testified that the berm was "[a]pproximately six inches -- five to six inches high. We did not make it really square, yeah, like

a curb. We kinda' just rounded it out. And, mostly, to let people know that that's not a way to ingress or egress a property."

Police Officer Larry Lawson (Officer Lawson), testified that on May 24, 1999, he responded to a call in Pupukea. As he "was getting ready to turn on to Pupukea from Kam Highway, [he] observed Doctor Price and another unknown male shoveling at some curbing that had been placed in the -- around, I guess, the edge of his property that had been put there this morning -- in the morning[.]" Price "was using a big shovel, and he was sticking the shovel part of it, . . . into the asphalt type curbing prying it up and removing it from the place that it had been placed." Officer Lawson observed Price for "no longer than 30 (thirty) seconds" and saw that approximately 15 feet of the total 30 feet of curbing had been removed. At the property, Price told Officer Lawson that "the curbing was an illegal easement, it was blocking his ingress and egress to his property, and that he removed it because it was illegal."

At the end of the trial, the court stated:

The Court does find in the case the facts to be that--that the defendant did intentionally damage by using a shovel to remove the berm that was installed on property owned by another, either the State of [sic] the City and County, or both.

And, that the testimony of Mr. Shimose and Mr. Gabrielle verified that the--by work orders and maps, that the berm was installed on the property of the City and County of Honolulu and/or the State of Hawaii. And that the permission was obtained by the State to install the--the berm on the City and County property, if it was on City and County property.

And, therefore, the Court finds that there --the intentional damage of the berm was done without the consent of either the City and County of Honolulu, or the State of Hawaii.

Therefore, the Court does find the defendant guilty of criminal property damage in the fourth degree.

The court sentenced Price to pay restitution in an amount to be determined by Counseling and Probation.

On April 25, 2000, District Court Judge David L. Fong held a restitution hearing and decided as follows: "The Court is satisfied based on the evidence presented by the State that the restitution amount should be established at \$806.01, and will therefore order that restitution amount."

#### STANDARD OF REVIEW

##### A. Sufficiency of Evidence

Regarding appellate review for insufficient evidence, the Hawai'i Supreme Court has repeatedly stated:

[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 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.

State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998).

#### DISCUSSION

Price asserts two points on appeal. We will discuss them in order.

##### 1.

Price contends that there was insufficient evidence to support the finding that the AC berm was located on the property

of the City and County of Honolulu and/or the State of Hawai'i. He argues that "[a]bsent proof beyond a reasonable doubt that the curbing was installed outside of the boundaries of Lot 15, [Price] could not be found guilty of having damaged 'property of another' and should have been found not guilty."

Price's point lacks merit. Gabrielle testified that "part of the berm was placed within the State highway right of way. As it made the turn mauka on to Pupukea Road, it entered City and County property."

2.

Price contends that there was insufficient evidence to support the finding that the damage to the AC berm was done without the consent of the City and County of Honolulu. Price's point lacks merit.

First, we note that the evidence that the damage to the part of the AC berm within the State of Hawai'i's right of way was done without the consent of the State of Hawai'i is sufficient to support the conviction.

Second, the following precedent is applicable:

At most, the proposition that a "person whose property was allegedly damaged would not consent to the violent destruction of the property" is a "permissible inference of fact," which the trier of fact is permitted, but not compelled, to draw from common experience and the evidence as a whole, . . . Put simply, lack of consent to the violent destruction of a person's property *may* be proved circumstantially on the basis of logical and reasonable inferences drawn from the evidence adduced and common human experience.

State v. Pone, 78 Hawai'i 262, 274, 892 P.2d 455, 467 (1995)

(emphasis in the original) (citations omitted).

CONCLUSION

Accordingly, we affirm the February 22, 2000 Judgment convicting Defendant-Appellant Doctor Nui Loa Price of Criminal Property Damage in the Fourth Degree, HRS § 708-823 (1993).

DATED: Honolulu, Hawai'i, August 8, 2001.

On the briefs:

Walter R. Schoettle  
for Defendant-Appellant.

Chief Judge

Donn Fudo,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

Associate Judge

Associate Judge