

NOT FOR PUBLICATION

NO. 25675

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

STATE OF HAWAII, Plaintiff-Appellee, v.
RICKY OTSUKA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 02-1-0977(2))

MEMORANDUM OPINION

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

Defendant-Appellant Ricky Otsuka (Otsuka) appeals from the Judgment of Probation entered on February 6, 2003, by the Family Court of the Second Circuit (family court).¹ Otsuka was charged with abuse of a family member, namely his wife, in violation of Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2003).² He was found guilty after a bench trial.

On appeal, Otsuka argues that: 1) there was insufficient evidence to negate his defense of self-defense; 2) the family court clearly erred in finding that he fell because he was drunk and not because of the push by his wife; and 3) there was insufficient evidence that he acted with the requisite mens

¹The Honorable Reinette Cooper presided.

² Hawaii Revised Statutes § 709-906 (Supp. 2003) provides in pertinent part that, "(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member"

rea in physically abusing his wife. We affirm the family court's Judgment of Probation.

DISCUSSION

The cornerstone of Otsuka's arguments on appeal is that the family court should have believed his testimony over that of his wife. However, it is the province of the trier of fact, not the appellate courts, to determine the credibility of witnesses and the weight of evidence. State v. Aki, 102 Hawai'i 457, 460, 464, 77 P.3d 948, 951, 955 (App.), cert. denied, 102 Hawai'i 526, 78 P.3d 339 (2003). Moreover, in reviewing the sufficiency of the evidence, we examine the evidence in the light most favorable to the prosecution to determine whether there was substantial evidence to support the conviction. Id. at 460, 77 P.3d at 951. With these principles in mind, we turn to Otsuka's arguments.

A. The Prosecution Introduced Sufficient Evidence to Negate Otsuka's Claim of Self-Defense.

Otsuka claims that there was insufficient evidence to negate his defense of self-defense. The trial evidence showed that Otsuka was intoxicated and began arguing with his wife as she was driving their van home after a party. Otsuka yelled obscenities at his wife, kicked the dashboard, and seemed out of control. The Otsukas' four young children, ranging in age from three to ten years old, were riding in the van, and Otsuka's wife was afraid that she would get into an accident if Otsuka remained in the van. She stopped the van and ordered Otsuka to get out.

When Otsuka refused to leave the van voluntarily, Otsuka's wife pulled Otsuka from the van. At that point, Otsuka attempted to take the children with him, and Otsuka's wife pushed him away from the van. Otsuka stumbled backward three or four steps and fell. Otsuka's wife attributed Otsuka's fall to his being drunk rather than the force of her push. Otsuka got up and punched his wife in the nose, causing her to bleed.

Otsuka claimed that he struck his wife in self-defense because he thought she was going to push him to the ground again. However, Otsuka's wife testified that she was six to eight feet away from Otsuka when he got up, that he came at her fast, and that he punched her in the nose. Otsuka's wife testified that she was not moving towards Otsuka in an aggressive manner, but thought that she was either turning around to calm the children or closing the door to the van when Otsuka punched her. Otsuka's ten-year-old son also indicated that his mother was about six feet away from Otsuka when Otsuka got up and punched her.

Once a defendant introduces credible evidence supporting a claim of self-defense, the prosecution has the burden of negating that defense beyond a reasonable doubt. State v. Lubong, 77 Hawai'i 429, 431, 886 P.2d 766, 768 (App. 1994). The use of force against another person is justified when the defendant 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 § 703-304(1) (1993). Sufficient evidence to support a conviction, including negating a defense, can be established through the testimony of a single witness. State v. Eastman, 81 Hawai'i 131, 141, 913 P.2d 57, 67 (1996).

The evidence, viewed in the light most favorable to the prosecution, showed that Otsuka did not have a reasonable belief that punching his wife in the nose was "immediately necessary" to protect himself against the unlawful use of force by his wife. The prosecution produced substantial evidence to negate Otsuka's defense of self-defense.

B. Otsuka Is Not Entitled to Any Relief Based on the Family Court's Statement That He Fell Because He Was Drunk.

Otsuka argues that the family court's statement that he fell "not from the push, but because he's drunk" was a clearly erroneous factual finding. The family court's statement was not made in response to either party's request for specific factual findings pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 23(c) (2004), but rather was part of the comments made by the family court as a prelude to finding Otsuka guilty. Given this context, it is not clear that the family court's statement constitutes a factual finding that if clearly erroneous would entitle Otsuka to any relief. See, State v. Napoleon, 2 Haw. App. 369, 370-71, 633 P.2d 547, 549 (1981), overruled on other

grounds by State v. Van Dyke, 101 Hawai'i 377, 387 n.14, 69 P.3d 88, 98 n.14 (2003); State v. Alsip, 2 Haw. App. 259, 262-63, 630 P.2d 126, 128-29 (1981).

In any event, even assuming that the family court's statement constitutes a factual finding, we conclude that it was not clearly erroneous. A factual finding 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 a definite and firm conviction that a mistake has been made.

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

(citations and internal quotations omitted).

Otsuka interprets the family court's statement as a determination that his fall, which preceded his punching his wife, was "solely" due to his intoxication. However, a more reasonable interpretation is that the family court believed that Otsuka's fall was primarily attributable to his intoxication rather than the force of his wife's push. It was undisputed that Otsuka fell after being pushed by his wife. Both parties and the family court acknowledged this fact. Given this context, it is unlikely that the family court meant that the push played no role in Otsuka's fall. Rather the family court's statement is more appropriately understood as meaning that Otsuka's fall was mainly caused by his intoxicated state, reflecting the family court's

belief that Otsuka could have maintained his balance after being pushed had he not been drunk.

There was substantial evidence to support a finding by the family court that Otsuka's fall was primarily attributable to Otsuka's intoxication rather than the force of his wife's push. Otsuka's wife testified that Otsuka was intoxicated to the point that he was belligerent, shouting incoherently, and losing control while in their van. She described Otsuka as "stumbl[ing] backward" and falling after she pushed him away from the van. She attributed Otsuka's falling to "how drunk he was." Otsuka admitted that he had consumed at least four beers, that he was tired, and that he was feeling the effects of the alcohol before he fell. Given this evidence, any finding by the family court that Otsuka's fall was caused by his intoxication was not clearly erroneous.

In addition, we reject Otsuka's suggestion that the family court's view as to what caused his fall was important to its determination of whether he acted in self-defense, or that a finding that he fell solely because he was pushed would have affected the outcome of his case. The reason Otsuka fell was relatively insignificant to his claim of self-defense. The pivotal question was whether his wife's conduct after he fell made it reasonable for Otsuka to believe that punching her was "immediately necessary" for him to protect himself against her.

Otsuka's wife, whom the family court found credible, testified that she was six to eight feet away from Otsuka and was not moving towards him in an aggressive manner when Otsuka punched her. Indeed, Otsuka's wife thought she was tending to the children when Otsuka delivered the blow. Contrary to Otsuka's contention, there was ample evidence to rebut his claim of self-defense regardless of what caused his fall.

C. The Prosecution Introduced Sufficient Evidence to Prove That Otsuka Acted With the State of Mind Required for the Charged Offense.

The crime of abusing a family or household member requires proof that the defendant acted intentionally, knowingly, or recklessly. State v. Eastman, 81 Hawai'i at 139-40, 913 P.2d at 65-66. Otsuka argues that there was insufficient evidence to show that he acted intentionally, knowingly, or recklessly in physically abusing his wife. Otsuka's argument is based on his trial testimony that he meant to push his wife in the chest, but accidentally missed and ended up hitting her in the face with open hands.

Otsuka's wife, however, testified that Otsuka punched her in the nose with a fist, hard enough to draw blood. The wife's testimony was corroborated by Otsuka's son, who testified that his father had punched his mother in the nose, causing her to bleed. The State also introduced a photograph of Otsuka's

wife taken shortly after the incident that showed her with a swollen nose and blood on her face.

The family court was entitled to reject Otsuka's testimony and accept the contrary testimony of his wife and son. We conclude that there was substantial evidence for the family court to find that Otsuka, at the very least, acted recklessly in causing his wife to suffer physical abuse. Id. at 141, 913 P.2d at 67.

CONCLUSION

The February 6, 2003, Judgment of Probation entered by the family court is affirmed.

DATED: Honolulu, Hawai'i, August 25, 2004.

On the briefs:

Arleen Y. Watanabe,
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County of Maui,
for plaintiff-appellee.

Chief Judge

James S. Tabe,
Deputy Public Defender,
for defendant-appellant.

Associate Judge

Associate Judge