

NO. 25980

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DEWITT LAMAR LONG, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD CRIMINAL NO. 03230214)

E.M. RICHMOND
CLERK, APPELLATE COURT
STATE OF HAWAII

2005 JUL 22 AM 9:57

FILED

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Dewitt Lamar Long (Long) appeals from the Judgment^{1/} filed on October 15, 2003 in the District Court of the First District, Honolulu Division (district court).^{2/} Long was convicted after a bench trial of Disorderly Conduct in violation of Hawaii Revised Statutes (HRS) § 711-1101(1)(b) (1993 & Supp. 2004).^{3/}

^{1/} Defendant-Appellant Dewitt Lamar Long (Long) was charged with violating Hawaii Revised Statutes (HRS) § 707-1101(1)(b) (1993 & Supp. 2004) and was found guilty as charged. However, the October 15, 2003 Judgment fails to set forth the HRS subsection under which Long was charged and convicted. The district court is hereby ordered to file an Amended Judgment setting forth nunc pro tunc the particular HRS subsection under which Long was convicted.

^{2/} The Honorable John Campbell, Jr. presided.

^{3/} HRS § 711-1101 (1993 & Supp. 2004) provides in relevant part:

HRS §711-1101 Disorderly conduct. (1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

.....

(b) Makes unreasonable noise[.]

.....

(continued...)

On appeal, Long contends there was insufficient evidence to support a conviction because Long did not have the intent to cause physical inconvenience or alarm to a member or members of the public, as required under HRS § 711-1101, and there was no evidence that Long actually affected members of the public.

Upon careful review of the record and the briefs submitted by the parties, we hold that substantial evidence existed to support Long's conviction and to support the determination that Long acted with intent "to cause physical inconvenience to, or alarm by, a member or members of the public," or recklessly creating a risk thereof, by making unreasonable noise (playing a radio loudly at 3:00 a.m., 4:00 a.m., and 4:20 a.m.). State v. Leung, 79 Hawai'i 538, 544, 904 P.2d 552, 558 (App. 1995) (internal quotation marks, citation,

²/(...continued)

(2) Noise is unreasonable, within the meaning of subsection (1)(b), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature of the location and the time of the day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a police officer that the noise is unreasonable and should be stopped or reduced.

The renter, resident, or owner-occupant of the premises who knowingly or negligently consents to unreasonable noise on the premises shall be guilty of a noise violation.

(3) Disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if the defendant persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

and emphasis in original omitted); HRS § 711-1101. The police officers testified that they warned Long to turn off the radio on three separate occasions, two of which were prompted by noise complaints. The district court did not err in denying Long's motions for judgment of acquittal and finding Long guilty of Disorderly Conduct. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998) (quoting State v. Quitog, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997)).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on October 15, 2003 in the District Court of the First District, Honolulu Division, is affirmed.

DATED: Honolulu, Hawai'i, July 22, 2005.

On the briefs:

Jeffrey A. Hawk
for defendant-appellant.

Ryan Yeh,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.


Chief Judge


Associate Judge


Associate Judge