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NO. 26780

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
EDWARD W. DEMATTOS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
NORTH AND SOUTH HILO DIVISION
(REPORT NO. H-54128/HL)

MEMORANDUM OPINION

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

Defendant-Appellant Edward W. DeMattos (DeMattos) appeals from the June 30, 2004 Judgment,¹ entered in the District Court of the Third Circuit, finding him guilty of the petty misdemeanor of Harassment, Hawaii Revised Statutes (HRS) § 711-1106(1)(b) (Supp. 2004), and sentencing him to pay a \$100 fine, and a \$25 Criminal Injury Compensation Fee. We affirm.

HRS § 711-1106 states, in relevant part, as follows:

Harassment. (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

.

(b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another[.]

¹

Judge John J. Moran presided.

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HRS § 702-204 (1993) states, as follows:

State of mind required. Except as provided in section 702-212, a person is not guilty of an offense unless the person acted intentionally, knowingly, recklessly, or negligently, as the law specifies, with respect to each element of the offense. When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.

The November 26, 2003 Complaint charged that

On or about the 27th day of June, 2003, in South Hilo, County and State of Hawaii, EDWARD DEMATTOS, with intent to harass, annoy, or alarm SONJA ALLEN, did insult, taunt, or challenge SONJA ALLEN in a manner likely to provoke an immediate violent response or which would cause SONJA ALLEN to reasonably believe that EDWARD DEMATTOS intended to cause bodily injury to SONJA ALLEN or another, or damage to the property of SONJA ALLEN or another, thereby committing the offense of Harassment, in violation of Section 711-1106(1)(b), Hawaii Revised Statutes, as amended.

DeMattos states the following points of error:

1. The trial court erred in convicting DeMattos of Harassment where there was insufficient evidence that DeMattos possessed the intent to "harass, annoy or alarm" as required by HRS § 711-1106(1)(b).

2. The State failed to present sufficient evidence to prove beyond a reasonable doubt that . . . DeMattos insulted, taunted or challenged Sonja Allen.

3. The trial court erred in convicting DeMattos of Harassment where there was insufficient evidence that DeMattos intended to cause bodily injury to Sonja Allen or another, or damage to her property or property of another as required by HRS § 711-1106(1)(b).

STANDARDS OF REVIEW

"The interpretation of a statute is a question of law reviewable de novo." State v. Young, 107 Hawai'i 36, 39, 109 P.3d 677, 680 (2005) (citations and internal quotation marks omitted).

Furthermore, our statutory construction is guided by established rules:

NOT FOR PUBLICATION

When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

In construing an ambiguous statute, "the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." HRS § 1-15(1) (1993). Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool.

Gray [v. Administration Director of the Court], 84 Hawai'i [138,] 148, 931 P.2d [580,] 590 [(1997)] This court may also consider "the reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning." HRS § 1-15(2) (1993). "Laws *in pari materia*, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another." HRS § 1-16 (1993).

Id. at 39-40, 109 P.3d at 680-81 (brackets omitted; quoting State v. Kaua, 102 Hawai'i 1, 7-8, 72 P.3d 473, 479-80 (2003)).

The standard of review on appeal for sufficiency of the evidence is the following:

We have long held that evidence 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. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996)

(citations, internal quotation marks and brackets omitted; block quote format changed).

Although the prosecution did not introduce direct evidence showing Eastman's state of mind at the time when he physically abused Bautista, it is not necessary for the prosecution to introduce direct evidence of a defendant's state of mind in order to prove that the defendant acted intentionally, knowingly or recklessly. Given the difficulty of proving the requisite state of mind by direct evidence in criminal cases, proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient. The mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances.

Id. at 140-41, 913 P.2d at 66-67.

RELEVANT EVIDENCE

On June 27, 2003, Sonja Allen (Allen) was working as a cashier clerk in the store of the Bayfront Shell service station in South Hilo. At around four o'clock p.m., DeMattos entered the store. After waiting ten to fifteen minutes by the restroom, DeMattos approached the counter, identified himself, and told Allen that her daughter, Brandy, owed DeMattos \$185. When Allen inquired, "what for?" DeMattos responded, "For the Yakudoshi party." As Allen repeated her denial and DeMattos repeated his allegation, DeMattos moved closer and closer to Allen and his voice got louder and louder. Allen testified, in relevant part, as follows:

A.

And he was getting closer and closer so I got scared. I thought he was going to hit me. So - so I said, "You know, are you threatening me and my daughter? Get out." Because he was getting louder. "No. She only paid for the birthday cake. She only paid for the birthday cake." Kept on telling me that. I

NOT FOR PUBLICATION

said, "No, she didn't." And he kept on coming closer. I said, "Get out of my store before I call the police." And then he kind of back off, went "aaah".

Q. Then what?

A. I just stood there, you know, shaking.

.

Q. What did he do then?

A. He kind of walked to the front door, turned around, and he said, "Tell Brandy that on Monday people are going to be waiting for her after work."

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Q. Okay.

When he told you on Monday your daughter Brandy is going to have people waiting for her outside of her workplace how --

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Q. How did that make you feel?

.

A. Threatened.

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A. I was scared.

David Kanemitsu (Kanemitsu) testified that when the incident occurred he was a salesman and delivery person for Asia Trans & Co. and he was in the Bayfront Shell store checking and stocking his items when he heard a loud conversation between Allen and DeMattos starting to escalate. Kanemitsu testified, in relevant part, as follows:

[PROSECUTOR]: Q And what was Mr. DeMattos' tone of voice as he spoke to the female clerk?

A Rough and threatening.

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[KANEMITSU]: Yes. It seemed like the man was aggressor.

NOT FOR PUBLICATION

[PROSECUTOR]: Q And why do you come to that conclusion?

A It just seemed that he came into the store and engaged her in this conversation, and it seemed that she was defending herself and that he was obviously trying to make a point with her.

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Q Did you hear anything specific at any time that Mr. DeMattos may have said during the course of this loud conversation?

A Um, they were talking about some type of gathering and about food. Uh, who supplied food for a gathering. And so I -- I assumed they knew each other. And I don't know where it went from there, but I -- I remember how the conversation came to an end. And basically he told her -- he said, "Just tell her to watch out, because people are gonna be waiting for her when she gets through with work. They're gonna be at her car."

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Q And in what manner of -- how did he say this? In a loud voice? Could you describe how he said this to . . . Allen?

A Well, he was very forceful, with a lotta conviction, in a threatening tone.

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Q What did you do after Mr. DeMattos left?

A I went to go see Sonja and see if she was all right.

Q And why did you do that?

A Because I -- I assumed she was pretty shaken up by the -- what just happened.

Q And what was -- would you describe how she looked when you did approach her.

A She was shaking. I thought she might start crying or something like that, but she -- she held herself together. But she was very nervous.

Q Do you know whether she called the police or not?

A Yes. She got on the phone, and she called -- called the police, yeah.

On July 30, 2004, DeMattos asked for, and was granted, an extension of time from July 30, 2004 to August 29, 2004 to file his notice of appeal. DeMattos filed the notice of appeal

NOT FOR PUBLICATION

on August 27, 2004. This case was assigned to this court on April 22, 2005.

DISCUSSION

The prosecution was required to prove that: (1) DeMattos; (2) with intent to harass, annoy, or alarm Allen or Brandy; (3) insulted, taunted, or challenged Allen; (4) in a manner likely to provoke an immediate violent response or that would cause Allen to reasonably believe that DeMattos intended to cause bodily injury to Allen or Brandy or damage to the property of Allen or Brandy.

We conclude that the record contains substantial evidence that: (1) DeMattos; (2) with intent to harass, annoy, or alarm Allen or Brandy; (3) challenged Allen; (4) in a manner that would cause Allen to reasonably believe that DeMattos intended to cause bodily injury to Allen or Brandy.

Point of error no. 3 has no merit because the prosecution was required to prove that Allen reasonably believed "that DeMattos intended to cause bodily injury to [her] or another, or damage to her property or property of another[.]" The prosecution was not required to prove that as a fact.

Point of error no. 1 has no merit because the record contains substantial evidence that DeMattos acted with the intent to harass, annoy, or alarm Allen.

NOT FOR PUBLICATION

Point of error no. 2 presents the question whether the record contains substantial evidence that DeMattos insulted, taunted, or challenged Allen.

The term "insult" is defined as "to treat with insolence, indignity, or contempt; to make little of[.]" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1173 (1981). The record does not contain substantial evidence of an insult.

The term "taunt" is defined as "to reproach or challenge in a mocking or insulting manner; jeer at[.]" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2344 (1981). The record does not contain substantial evidence of a taunt.

The term "challenge" is defined as "1. To bring a charge against (accuse); 2. To assert a right, title, or claim to; 3. To call into question for verification, explanation, or justification." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 371 (1981). The record contains substantial evidence of a "challenge[.]" In the store, DeMattos repeatedly communicated to Allen his accusation that Brandy failed to pay him a debt of \$185. The alleged debt was the primary topic of the conversation. As evidenced by his repeated allegation, his increasing verbal tones and velocities, and his increasingly aggressive physical demeanor and actions, DeMattos vigorously communicated his position and demand to Allen. This is substantial evidence of both a verbal and a physical challenge to Allen.

NOT FOR PUBLICATION

CONCLUSION

Accordingly, we affirm the June 30, 2004 Judgment.

DATED: Honolulu, Hawai'i, August 2, 2005.

On the briefs:

Dayna-Ann A. Mendonca,
Deputy Public Defender,
for Defendant-Appellant.


Chief Judge

Jefferson R. Malate,
Deputy Prosecuting Attorney,
County of Hawaii,
for Plaintiff-Appellee.


Associate Judge


Associate Judge