

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27783

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
SARAH SCHUCK, Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR. NO. 05-1-0610(4))

MEMORANDUM OPINION

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

Defendant-Appellant Sarah Schuck (Schuck) appeals from the January 27, 2006 Judgment, entered in the Family Court of the Second Circuit,¹ finding her guilty of violating Hawaii Revised Statutes § 709-906 (Supp. 2006), which states in part:

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.

. . . .

(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors and the person shall be sentenced as follows:

(a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; . . .

. . . .

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to

¹ Judge Richard T. Bissen, Jr., presided.

chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

(6) Whenever a court sentences a person pursuant to subsection (5), it also shall require that the offender undergo any available domestic violence intervention programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (5) (a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

We affirm.

BACKGROUND

The November 25, 2005 Complaint alleged that on November 18, 2005, Schuck "did intentionally, knowingly or recklessly engage in and cause physical abuse of a family or household member, to wit, Kaleo Amadeo[.]"

Ranar Amadeo (Amadeo), aka Kaleo Amadeo, testified that on November 18, 2005, Schuck "slapped" him three times but he did not feel any pain from those slaps. Subsequently, after Amadeo and Schuck had been separated from each other, Schuck physically attacked Amadeo. Amadeo testified that when Schuck came at him, Amadeo put his hands up "into a little defense block" and, in his words, "I never feel like one direct hit to my head. I never feel like any direct blows which would have caused any pain."

Amadeo admitted that he had, on the night of the incident, completed a "victim voluntary statement form" by adding the following italicized words:

Describe how you were physically abused? (e.g. slapped, punched, kicked, choked, ect. [sic]) Slapped
punches

What part(s) of your body hurt and/or has injuries? Right elbow

Police Officer John Bowker (Bowker) testified that he was off-duty when he saw Shuck hit Amadeo's head with "[h]er hands" "several times" "from behind."

The January 27, 2006 Judgment sentenced Shuck to probation for one year subject to the following conditions: Forty-eight hours jail, credit for four hours served, and to pay a \$75 Probation Service Fee and a \$55 Criminal Injuries Compensation Fee. On February 9, 2006, the court entered an Order Granting Motion to Stay Sentence Execution Pending Appeal.

DISCUSSION

I.

Schuck contends that the court erred in finding that Schuck caused the pain in Amadeo's right elbow. Upon a review of the record, we disagree.

II.

Schuck contends that the court improperly used "pain" as the threshold to adjudicate Sarah Schuck's guilt. The opening brief states:

[A]buse . . . mean[s] "to maltreat and connotes such treatment as will injure, hurt or damage a person" as cited in State v. Nomura, 79 Hawai'i 413, 903 P.2d 718 (App. 1995), citing State v. Kameenui, 69 Haw. 620, 623, 753 P.2d 1250, 1252 (1988). Because the evidence in the record shows that the trial court only relied on pain as a factor in convicting Sarah, the conviction must be revoked.

In light of the following precedent, we disagree:

Hawaii Revised Statutes (HRS) § 709-906(1) (1993 & Supp.2002) provides, in pertinent part, that "[i]t shall be unlawful for any person, singly or in concert, to physically abuse a family or household member [.]" See also HRS § 702-204 (1993)

("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"); *State v. Eastman*, 81 Hawai'i 131, 140, 913 P.2d 57, 66 (1996) (pursuant to HRS § 702-204, "the requisite state of mind for a violation of HRS § 709-906(1) is that of acting intentionally, knowingly, or recklessly"); *State v. Tomas*, 84 Hawai'i 253, 257, 933 P.2d 90, 94 (App.1997) ("to 'physically abuse' someone under HRS § 709-906(1) means to maltreat in such a manner as to cause injury, hurt or damage to that person's body" (citations and some internal quotation marks omitted)); *State v. Nomura*, 79 Hawai'i 413, 415-16, 903 P.2d 718, 720-21 (App.1995) (in a prosecution for abuse of family or household members, jury instructions defining "physical abuse" as "causing bodily injury to another person[,]" and "bodily injury" as "physical pain, illness or any impairment of physical conditions [(sic),]" were not incorrect (block quote format omitted)).

State v. Aki, 102 Hawai'i 457, 458, n.1, 77 P.3d 948, 949, n.1 (App.) (cert. denied, 102 Hawai'i 526, 78 P.3d 339 (2003)).

III.

Schuck contends that

the evidence is insufficient to show that [Schuck] acted with the requisite state of mind to cause [Amadeo] pain. [Amadeo] testified that he became aware of the pain in his elbow while he and [Schuck] were engaged in the tug-of-war over his clothes. By no stretch of the imagination can it be concluded that [Schuck] acted intentionally, knowingly or recklessly to cause bodily injury or physically ab[u]sed [Amadeo] by pulling on his clothes.

This argument lacks merit because it fails to recognize the difference between the time when the act causing the pain occurred and the time when the person suffering the pain became aware of the pain.

IV.

Schuck contends that the trial court improperly questioned the witnesses to the point where plain error occurred. Specifically, she contends, in the opening brief, that

[b]ecause, the trial court's questions went beyond eliciting pertinent material facts not brought out by either party or clarifying [Schuck's] or Bowker's testimony, the conviction must

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be reversed as plain error. State v. Schutter, 60 Haw. 221, 588 P.2d 428 (1978), Hawaii Rules of Penal Procedure (HRPP), Rule 52(b).

Upon a review of the record, we disagree.

CONCLUSION

Accordingly, we affirm the family court's January 27, 2006 Judgment.

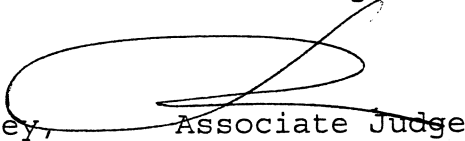
DATED: Honolulu, Hawai'i, March 8, 2007.

On the briefs:

Joseph S. Lee,
Deputy Public Defender,
for Defendant-Appellant.


Chief Judge

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Associate Judge


Associate Judge