

NO. 24550

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

CASSIDY ROGERS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CASE NO. 5P101-155)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Ramil, and Acoba, JJ.,
and Nakayama, J., Dissenting)

Defendant-appellant Cassidy Rogers (Appellant) appeals from the judgment of the district court of the fifth circuit, the Honorable Judge Trudy K. Senda presiding, convicting him of and sentencing him for the offense of harassment, pursuant to Hawai'i Revised Statutes (HRS) § 711-1106(1)(e) (Supp. 2001). On appeal, Appellant argues that there is insufficient evidence to sustain a conviction of harassment under HRS § 711-1106(1)(e) because:

(1) the plaintiff-appellee State of Hawai'i (the prosecution) failed to prove that he possessed the requisite intent to harass, annoy or alarm YWCA personnel; (2) the prosecution failed to prove that he repeatedly made communications after being advised by the person to whom the communication was directed that further communication was unwelcome; and (3) the telephone calls in

question were "ordinary communications" that do not fall within the scope of HRS § 711-1106.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we reverse the judgment of the district court.

HRS § 711-1106(1)(e) states in relevant part, "[a] person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person . . . [r]epeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome[.]" Although Appellant was informed by YWCA employee Gladys Shires (Shires) that further communication was unwelcome, there was insufficient evidence to support a finding that Appellant's communications were "directed" at Shires. The record shows that at no time did Appellant ask to speak with Shires, and the calls were made to the residence line at the YWCA shelter, which is directed to the residents of the shelter. Because these elements of the charge were not proved by sufficient evidence, the court need not address the Appellant's other points of error, and the conviction for harassment cannot stand.

IT IS HEREBY ORDERED that the judgment of the district court of the fifth circuit entered on August 14, 2001 is reversed.

DATED: Honolulu, Hawai'i, September 16, 2002.

NAKAYAMA, J., DISSENTS

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brief) for defendant-
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