

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

SPENCER MYERS, Defendant-Appellant.

APPEAL FROM THE SECOND CIRCUIT FAMILY COURT
(FC-CR. NO. 01-1-0411)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Spencer Myers appeals from the judgment, including terms and conditions of probation, filed on August 27, 2001 by the Family Court of the Second Circuit, the Honorable Reinette W. Cooper presiding, convicting him of and sentencing him for the offense of abuse of family and household member, in violation of Hawai'i Revised Statutes (HRS) § 709-906 (Supp. 2001). Myers argues that the family court erred in finding him guilty on the basis that there was insufficient evidence to support a finding (1) that he physically abused his father with the requisite state of mind (i.e., recklessly) and (2) that the prosecution had proven beyond a reasonable doubt that Myers did not act in self-defense.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced¹ and the issues raised by the parties, we affirm the family court's judgment. The prosecution adduced

¹ Oral argument was heard in the present matter on November 13, 2002.

substantial evidence, see State v. Jenkins, 93 Hawai'i 87, 99, 997 P.2d 13, 25 (2000) ("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. Under such a review, we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact." (Quoting State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996).)), that Myers was "very angry and upset" on the morning of May 11, 2001, that he was physically violent, that he was in the process of preventing his girlfriend, Marina Yamada, from removing her belongings from his father's home, that his father intervened in an effort to assist Yamada, and that Myers "rushed" his father and "wrestled" him to the ground, thereby injuring him. Moreover, the testimony of all three witnesses indicated that Myers could have avoided any conflict by allowing Yamada to collect her belongings and leave the home. Therefore, giving full play to the trier of fact's right to assess the credibility of witnesses and draw inferences of fact, see id.; see also State v. Birdsall, 88 Hawai'i 1, 8-9, 960 P.2d 729, 736-37 (1998) ("the [finder of fact] may accept or reject any witness's testimony in whole or in part" (quoting State v. Clark, 83 Hawai'i 289, 298-99, 926 P.2d 194, 203-04 (1996))), there was sufficient evidence to support a finding (1) that Myers abused his father with a reckless state of mind -- i.e., Myers "consciously disregarded a substantial and unjustifiable risk" of physically abusing his father, see HRS § 702-206(3) (1993) -- and (2) that Myers did not "[reasonably] believe[] that such force [was] immediately necessary for the purpose of protecting himself against the use of unlawful force by [his father]." HRS §§ 703-304 and 703-310 (1993). Therefore,

IT IS HEREBY ORDERED that the family court's judgment of conviction, including terms and conditions of probation, from which the present appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, November 29, 2002.

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