

NO. 25934

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

STATE OF HAWAI'I, Plaintiff-Appellee

v.

XANYA SOFRA-WEISS, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(HPD Criminal No. 02310026)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Xanya Sofra-Weiss, Ph.D. (Dr. Weiss) appeals from the Judgment filed on October 9, 2003, in the District Court of the First Circuit (district court). Dr. Weiss was charged with harassment in violation of Hawaii Revised Statutes (HRS) § 711-1106(1)(b) and/or (1)(f) (2003 Supp.) and criminal property damage in the fourth degree in violation of HRS § 708-823(1) (1993). After a bench trial, district court Judge Clarence Pacarro found Dr. Weiss guilty of harassment and acquitted her of the criminal property damage charge. Judge Pacarro sentenced Dr. Weiss to payment of a \$150 fine and \$25 to the Criminal Injury Compensation Fund. No term of imprisonment or probation was imposed.

Dr. Weiss's sole claim on appeal is that there was insufficient evidence to support her harassment conviction because the prosecution witnesses committed "wholesale perjury" and their testimony was "inherently incredible." In reviewing insufficiency of evidence claims, we must determine whether, viewing the evidence in the light most favorable to the prosecution, there is substantial evidence to support the conviction. State v. Tamura, 63 Haw. 636, 637, 633 P.2d 1115, 1117 (1981). After a careful review of the record and the briefs submitted by the parties, we conclude that the evidence in this case was sufficient to support Dr. Weiss's conviction.

To be sure, conflicting evidence was presented by the prosecution and the defense. However, a conviction may be based on conflicting evidence as long as there is substantial evidence of the defendant's guilt. State v. Stocker, 90 Hawai'i 85, 90, 976 P.2d 399, 404 (1999). In addition, the finder of fact may choose to accept or reject any witness's testimony in whole or in part. State v. Cannon, 56 Haw. 161, 166, 532 P.2d 391, 396 (1975).

The testimony of the prosecution witnesses provided substantial evidence that Dr. Weiss was guilty of the charged harassment. Dr. Weiss vigorously attacked the credibility of certain prosecution witnesses at trial. The trial judge, however, found Dr. Weiss guilty of harassment based on the

judge's assessment of the credibility of the witnesses and the weight of the evidence. It is the province of the trier of fact, not the appellate courts, to determine the credibility of the witnesses and the weight of the evidence. State v. Aplaca, 96 Hawai'i 17, 23, 25 P.3d 792, 798 (2001); State v. Buch, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996). We are not at liberty to overturn the trial judge's determinations on these matters. Id.

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on October 9, 2003, in the District Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 15, 2004.

On the briefs:

Mangmang Qiu Brown,
Deputy Prosecuting Attorney
City and County of Honolulu
for plaintiff-appellee.

Acting Chief Judge

Earle A. Partington, Esq.
for defendant-appellant.

Associate Judge

Associate Judge