

NO. 27626

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHRISTOPHER FORBES, Defendant-Appellant

FILED
2007 MAR 19 AM 10:42
CLERK & CLERICAL COURTS
STATE OF HAWAI'I

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CRIMINAL NO. 05-1-2019)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Defendant-Appellant Christopher Forbes (Forbes) appeals from the Judgment of Conviction and Sentence entered on October 28, 2005 by the Family Court of the First Circuit (family court).^{1/} The family court found Forbes guilty of Harassment pursuant to Hawaii Revised Statutes (HRS) § 711-1106(1)(a) (Supp. 2006), sentenced him to six months of probation, and imposed fines totaling \$105.

On appeal, Forbes argues that the family court erred in convicting Forbes of Harassment

(1) where there was insufficient evidence to prove that Forbes intended to harass, annoy, or alarm Complainant, and

^{1/} The Honorable James H. Dannenberg presided.

(2) where there was insufficient evidence to prove that Forbes touched Complainant in an offensive manner or subjected Complainant to offensive physical contact.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Forbes's points of error as follows:

(1) The family court had sufficient evidence to conclude that Forbes touched Complainant in an offensive manner. A slap may constitute offensive touching. State v. Stocker, 90 Hawai'i 85, 91, 976 P.2d 399, 405 (1999). Placing arms around the waist of a victim and pulling may constitute offensive touching. State v. Hopkins, 60 Haw. 540, 544, 592 P.2d 810, 813 (1979). A push may constitute offensive touching. State v. Sanchez, 9 Haw. App. 315, 323, 837 P.2d 1313, 1318 (1992). Complainant testified that while they were in the bedroom, Forbes grabbed her head and pushed it. She also testified that Forbes struggled with her and grabbed her arms, bruising one, while they fought over the cell phone in the bathroom. She further testified that Forbes put his hands around her neck. The family court had sufficient evidence to find that Forbes committed offensive touching upon Complainant.

(2) The family court had sufficient evidence to conclude that Forbes acted with the requisite intent to support a conviction on the Harassment charge. HRS § 711-1106(1)(a) provides that a person "commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person: (a) [s]trikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact[.]" HRS § 701-114(1) (1993) requires that each element of the offense and the requisite state of mind be proved beyond a reasonable doubt. State v. Pinero, 75 Haw. 282, 300, 859 P.2d 1369, 1378 (1993). For conviction under the Harassment statute, the State must prove that the accused acted intentionally. HRS § 702-204 (1993). The State must therefore prove that Forbes intended to harass, annoy, or alarm Complainant by subjecting her to offensive physical touching. Hopkins, 60 Haw. at 542-44, 592 P.2d at 812-13. The State may demonstrate the requisite intent through circumstantial evidence. State v. Yabusaki, 58 Haw. 404, 409, 570 P.2d 844, 847 (1977). Complainant testified that Forbes had been drinking, had called her an animal and a prostitute, had followed her from room to room throughout the apartment during the course of the argument, and had grabbed her arms and neck. The family court had sufficient evidence from which to infer the necessary intent to convict on the Harassment charge.

Therefore,

The Judgment of Conviction and Sentence entered on October 28, 2005 by the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 19, 2007.

On the briefs:

Dawn M. Nekoba,
Deputy Public Defender,
for Defendant-Appellant.

Corinne K.A. Watanelle
Presiding Judge

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Daniel R. Foley
Associate Judge

Alisa M. Fujita
Associate Judge