

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29705

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

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

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2010 MAY 27 AM 8:24

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 08-1-2254)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Foley and Fujise, JJ.)

Defendant-Appellant Christopher McCormack (McCormack) appeals from the Judgment entered on February 11, 2009 by the Family Court of the First Circuit (family court).¹

McCormack was convicted of Harassment, in violation of Hawaii Revised Statutes (HRS) § 711-1106 (Supp. 2008).

On appeal, McCormack contends (1) there was insufficient evidence to convict him of Harassment because Plaintiff-Appellee State of Hawai'i (State) failed to prove that McCormack shoved, kicked, or otherwise touched the complaining witness in an offensive manner and (2) the State failed to disprove McCormack's justification of self-defense beyond a reasonable doubt.

Upon careful review of the applicable law, 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 McCormack's points of error as follows:

The evidence adduced at trial considered in the strongest light in favor of the prosecution demonstrated that McCormack acted intentionally to harass, annoy, or alarm the complaining witness by striking, shoving, or kicking her in an offensive manner or subjected her to offensive physical contact.

¹ The Honorable Gale L.F. Ching presided.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

The complaining witness testified that McCormack first shoved her into a wall which caused her to temporarily lose her balance. McCormack then grabbed her shirt and pants which caused her to lose her balance again. When the complaining witness attempted to grab McCormack to stabilize herself, he kicked her which caused her to fall down the stairs and injure her finger. The family court found the complaining witness's testimony credible and McCormack's testimony not credible. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999) (internal quotation marks, citations, and brackets omitted; block quote format changed).

"The prosecution disproves a justification defense beyond a reasonable doubt when the trial court believes the prosecution's case and disbelieves the defendant's case." State v. Jhun, 83 Hawai'i 472, 483, 927 P.2d 1355, 1366 (1996). It is evident that the family court believed the complaining witness's testimony and disbelieved McCormack's testimony with respect to his assertion that he was acting in self-defense by grabbing the complaining witness's hand. Id.

Therefore,

IT IS HEREBY ORDERED THAT the February 11, 2009 Judgment of the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 27, 2010.

On the briefs:

Setsuko Regina Gormley,
Deputy Public Defender,
for Defendant-Appellant.

Delanie D. Prescott-Tate
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge