

NO. 23312

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

v.

JOY CINENSE, Defendant-Appellant

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APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-S NO. 99-3039)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Joy Cinense (Defendant) appeals from a March 15, 2000 judgment of conviction on the charge that Defendant did, with the intent to harass, annoy, or alarm, strike, shove, kick, or otherwise touch his wife, Rachel Cinense (Complainant), in an offensive manner or subject her to harmful physical contact, thereby committing the petty misdemeanor offense of harassment, in violation of Hawai'i Revised Statutes (HRS) § 711-1106(1)(a) (1993).<sup>1</sup>

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<sup>1</sup> HRS § 711-1106(1)(a) provides as follows:

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm another person, that person:

(a) Strikes, shoves, kicks, or otherwise touches another person in an offensive

(continued...)

Defendant contends that the court erred when it convicted him of harassment, because Plaintiff-Appellee State of Hawai'i failed to offer sufficient evidence that Defendant struck, shoved, kicked, or otherwise touched Complainant in an offensive manner, or intended to annoy, harass, or alarm her.

We conclude, however, that substantial evidence existed on the record such that the trier of fact could reasonably conclude, beyond a reasonable doubt, that the required elements for harassment under HRS § 711-1106(1)(a) were proved. Complainant's written statement, submitted into evidence as Exhibit 1, contains testimonial evidence about Defendant's alleged conduct, despite Complainant's recantation of the statement at trial. Furthermore, the officer responding to Complainant's call witnessed Complainant's injury and testified that the injury was consistent with her written description of the incident.

“ “[Judgments] based on conflicting evidence will not be set aside where there is substantial evidence to support the [trier of fact's] findings.” State v. Stocker, 90 Hawai'i 85, 90, 976 P.2d 399, 404, (1999) (quoting Tsugawa v. Reinartz, 56

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<sup>1</sup>(...continued)

manner or subjects the other person to  
offensive physical contact[.]

. . . . .

(2) Harassment is a petty misdemeanor.

Haw. 67, 71, 527 P.2d 1278, 1282 (1974)). "Substantial evidence" is defined as "credible evidence which is of sufficient quality and probative value to enable a [person] of reasonable caution to support a conclusion." Id. It was within the court's province, as fact-finder, to give Complainant's written statement greater weight than her oral testimony, despite her recantation.

Therefore, the March 15, 2000 judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, January 31, 2001.

On the briefs:

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for defendant-appellant

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Prosecuting Attorney,  
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for plaintiff-appellee.