

NO. 24260

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

DAWN CORDEIRO, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NO. CR1 (1) 3P400-144/REPORT NO. G-36837/HM)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Dawn Cordeiro appeals from the District Court of the Third Circuit's April 5, 2001 judgment¹ of conviction and sentence finding Cordeiro guilty of harassment in violation of Hawai'i Revised Statutes (HRS) § 711-1106(1) (b) (Supp. 1999). On appeal, Cordeiro contends that the district court erred because (1) there was insufficient evidence to support the conviction because Cordeiro's statements were unlikely to provoke an immediate violent response from Kenneth Quiocho, a trained police officer, and her statements were not accompanied by outrageous physical conduct; and (2) Cordeiro's

¹ The Honorable Jeffrey Choi presided over the matter.

speech was protected by the first amendment of the United States Constitution.

Upon carefully reviewing the record and the briefs submitted, we hold as follows: (1) even when the evidence is taken in a light most favorable to the State of Hawai'i, there was insufficient evidence to support the district court's finding that under a totality of the circumstances Cordeiro's statements were likely to provoke an immediate violent response by police officer Quiocho or that Cordeiro's speech would cause police officer Quiocho to believe that she intended to cause bodily injury to him or damage to his property. HRS § 711-1106(1)(b); State v. Martinez, 101 Hawai'i 332, 338, 68 P.3d 606, 612 (2003). Where abusive speech is directed at a police officer, it must generally be coupled with outrageous physical conduct in order to rise to the level of harassment punishable under HRS § 711-1106(1)(b). In re John Doe, Born on Jan. 5, 1976, 76 Hawai'i 85, 96, 869 P.2d 1304, 1315 (1994); and (2) it is not necessary to consider Cordeiro's argument that her speech was protected by the first amendment to the United States Constitution because the evidence is insufficient to support Cordeiro's conviction of harassment. Therefore,

IT IS HEREBY ORDERED that the district court's judgment of conviction and sentence finding Cordeiro guilty of harassment is reversed.

DATED: Honolulu, Hawai'i, July 14, 2004.

On the briefs:

Cindy A.L. Goodness,
Deputy Public Defender,
for defendant-appellant
Dawn Cordeiro

Janet R. Garcia,
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for plaintiff-appellee,
State of Hawai'i