

NO. 24385

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

vs.

JAMES MICHAEL THOMAS, Defendant-Appellant.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 01-1-1541)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant James Michael Thomas appeals from the judgment of the family court, the Honorable Marilyn Carlsmith presiding, filed on June 5, 2001, convicting him of and sentencing him for the offense of harassment, pursuant to Hawai'i Revised Statutes (HRS) §§ 711-1106(1)(a) (Supp. 2001). On appeal, Thomas argued that the family court (1) plainly erred in admitting the complainant's Honolulu Police Department (HPD) 252 statement into evidence, inasmuch as the prosecution failed to lay the requisite foundation under Hawai'i Rules of Evidence (HRE) Rule 802.1(1)(B) (1993) and (2) erred in finding that there was substantial evidence to convict Thomas of harassment.¹

Upon carefully reviewing 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 affirm the judgment of the family court. With respect to Thomas's first point of error, inasmuch as the complainant's HPD

¹ Oral argument in this case was held on November 13, 2002.

252 statement satisfied the requirements set forth in HRE Rule 802.1(1)(B), -- i.e., the statement was reduced to a writing and signed by the complainant -- the family court did not plainly err in admitting it into evidence. With respect to Thomas's second point of error, viewing the evidence in the light most favorable to the prosecution, see State v. Batson, 73 Hawai'i 236, 248-49, 831 P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992), the family court did not err by concluding that there was sufficient evidence adduced at trial to establish beyond a reasonable doubt that, with the intent to harass, annoy, or alarm the complainant, Thomas subjected her to offensive physical contact. Specifically, the prosecution adduced evidence that Thomas intended to throw a paper cup, partially filled with ice cubes, at the complainant in an effort to annoy or alarm her, that the cup struck the complainant "very hard," and that she "felt dizzy from being struck." In light of the foregoing, there was substantial evidence to support Thomas's conviction and sentence. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, November 27, 2002.

James S. Gifford (Randall K.
Hironaka with him on the brief),
Deputy Public Defenders, for
the defendant-appellant
James Michael Thomas

Mangmang Qiu Brown, Deputy
Prosecuting Attorney, for
the plaintiff-appellee
State of Hawai'i