

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

DEWITT LAMAR LONG, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD NO. 02048654)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, JJ., and
Intermediate Court of Appeals Chief Judge Burns,
Assigned by Reason of Vacancy; Acoba, J., Dissenting)

Defendant-appellant Dewitt Lamar Long appeals from the judgment of conviction and sentence of the District Court of the First Circuit, the Honorable Leslie A. Hayashi presiding, adjudging him guilty of harassment, in violation of Hawai'i Revised Statutes (HRS) § 711-1106(1)(a) (Supp. 2001).¹ On appeal, the defense alleges that: (1) the trial court failed to advise Long of his right to testify pursuant to Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995) and (2) the prosecution failed to adduce sufficient evidence that Long (a)

¹ 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 . . . [s]trikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact[.]"

acted with the intent to harass, annoy, or alarm and (b) subjected the complaining witness to offensive physical contact.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced, the issues raised, and the controlling authority, we hold that: (1) the alleged violation of the colloquy requirement did not affect Long's substantial rights, cf. Tachibana, 79 Hawai'i at 240, 900 P.2d at 1307; State v. Staley, 91 Hawai'i 275, 982 P.2d 904 (1999) (holding trial court committed plain error when it relied on representations of defense counsel regarding defendant's election to not testify); and (2) the complaining witness's testimony established sufficient evidence of intent to harass, annoy, or alarm and of offensive physical contact, see State v. Batson, 73 Haw. 236, 254, 831 P.2d 924, 934 (1992); State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996). Therefore,

IT IS HEREBY ORDERED that the January 16, 2002 judgment of conviction and sentence from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, January 31, 2003.

Jon N. Ikenaga,
Deputy Public Defender,
for defendant-appellant

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
for plaintiff-appellee