

NO. 23035

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
FEDERICO TRAXLER, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT
OF THE FIRST CIRCUIT, HONOLULU DIVISION
(DC NO. 98-404912, TRA 19 OF 11/17/99)

MEMORANDUM OPINION

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Defendant-Appellant Federico Traxler (Traxler) appeals the November 17, 1999 judgment of the district court of the first circuit, which convicted him, upon a bench trial, of the offense of harassment, in violation of Hawai'i Revised Statutes (HRS) 711-1106(1)(a).¹ We affirm.

I. The Trial.

Before trial, Traxler was orally charged upon written complaint, as follows:

On or about November 2nd of 1998, in the City and County of Honolulu, State of Hawaii, Federico Traxler, with intent to harass, annoy, or alarm another person, to wit, Ms. Lina Medina, did strike, shove[,] kick, or otherwise

¹ Hawai'i Revised Statutes (HRS) § 711-1106(1)(a) (Supp. 2000) provides, in pertinent part, 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[.]"

touch Lina Medina in an offensive manner or subject Ms. Medina to offensive physical contact, thereby committing the offense of Harassment in [v]iolation of Section 711-1106(a) (a) [sic] of the Hawaii Revised Statutes.

The State's evidence consisted of the testimony of the complaining witness, Adelina Medina (Medina).

Medina testified on direct examination that on November 2, 1998, at about 10 p.m., Traxler, her boyfriend of about four years, came home late at night after having been away from their Liliha apartment for two days. According to Medina, Traxler "came home and he was hungry, yeah, and he made a plate for hisself, and he had a temper[.]" In Medina's words, "a little bit argument" ensued about his absence. During the argument, Traxler was seated on a couch which faced the couch she was sitting on, eating his food from a ceramic plate he was holding in his hand. According to Medina, "he throw the plate at me on my left knee, yeah." She claimed that the plate broke upon impact, causing her pain. Medina then got up, went to the front door and told him not to go out. Ignoring her admonition, Traxler left, whereupon Medina called the police. Medina denied touching Traxler during the incident. She denied giving him permission to throw the plate at her.

On cross-examination, Medina admitted that Traxler was tired and hungry when he came home late from work that night. She confessed to being angry with him because he had not come

home or called for two days, and even angrier when he refused to talk about it. She confirmed that Traxler wanted to leave "to just get away from the situation[,] " and that she blocked the door in an attempt to prevent his departure. Medina maintained that Traxler was looking at her when he threw the plate at her.

Traxler's defense consisted of his own testimony. He identified his occupation as "[f]reelance mechanic." He described what happened when he arrived at the apartment the night of the incident; in his words,

I came home all greased up, and then all pressure out from fixing up (indiscernible) engine. Then I tell her, when I knock the door, then she didn't really open the door right away. She asking me why did you come home late, one night you never come home, you with another girl, fixing another girl, I told you not to fix women's car, only men's car. Then I told her (indiscernible) hungry, and then about 15, 10, minutes she let me in."

Traxler proceeded to fix his dinner to the refrain of Medina's "nagging." He said she said, "you going out, you going out every place and you didn't come home, you come home late, every time you come late home (indiscernible)." As he testified about this, Traxler mentioned that they did not own any china at the time of the incident ("all we have is Chinese bowl"), having just moved into the apartment.

When his food was ready, Traxler turned the television on and sat on the sofa to eat. Medina continued to nag despite his request that they discuss the matter postprandially.

According to Traxler's estimate, the nagging went on for an hour or an hour-and-a-half, whereupon he decided to leave the apartment. Because he was hungry, Traxler wanted to take the food bowl with him, but Medina blocked the door. He was holding the bowl in his right hand and holding the door with his left, when Medina grabbed his shirt. As he was attempting to get a better hold on the door, Traxler dropped the bowl, "and then somehow it landed and I don't know where it landed and I manage to get out, and then she was (indiscernible) I send you back to jail and this and that, then I just left."

Traxler called Medina about two hours after leaving the apartment. She informed him that she had called the police and given them a statement, and that they were looking for him. The next day, Traxler called the police and went to the station to give them a statement.

Traxler steadfastly maintained that he did not throw the bowl at Medina.

On cross-examination, Traxler admitted that Medina's nagging had him "[a]ngry, (indiscernible) disappointed and tired, pressured." He twice revised his estimate of Medina's stamina, confirming first that her nagging lasted for one-and-a-half hours to two hours, then agreeing that it went on for two hours. He also expanded the catalogue of emotions he was experiencing at the time: "Dismay and disappointed and mad." He said that he

had not felt good that night, being "[p]retty tired, exhausted." He admitted that he was arguing with Medina.

Traxler offered an explanation for Medina's charges: "Last year if might say so, last year she did it to me again because people telling her if we fight, she can, anytime she can call the cops and I can go to jail, and that time (indiscernible) spent one month [for something I] haven't done." Soon after this bit of testimony, the court ended further exploration by the prosecutor by sustaining an objection on the basis of relevance.

Near the end of his testimony, Traxler offered this plaint: "I don't know what the definition of angry and mad, cause under pressure fixing cars everyday, I just want to rest, eat and then talk later and then explain everything what happened."

The court ruled as follows:

Mr. Traxler, this case is one of credibility, however the Court finds as follows: that on November 2nd, 1998, in the City and County of Honolulu, that you came home to your apartment at 15 North School Street, Number One, at approximately 10 p.m.; that you and your girlfriend had an argument in the apartment for approximately an hour or so; that during the argument while you people were sitting across from each other, you threw a plate, a plate of food at her striking her in the knee causing her physical pain; that you had no permission at that time to throw the plate at her person causing her any kind of pain.

Based on these facts, Court finds that you did intend to annoy, harass, or alarm Ms. Medina and subject her to offensive physical contact, and based on the fact, Court finds that any self-defense defense is not applicable in this

case based on the facts that the Court finds them to be in your particular case. Therefore, the Court finds you guilty as charged.

The court sentenced Traxler to six months of probation, conditioned upon completion of an anger management course and payment of a statutory fee of \$25.00. The sentence was stayed pending appeal.

II. Discussion.

Traxler presents a single issue on appeal. He contends there was insufficient evidence adduced at trial to convict him of harassment; specifically, that "there was no substantial evidence that he had thrown the plate with the specific intent to harass, annoy or alarm [Medina]."

Hawai'i Revised Statutes (HRS) § 711-1106(1)(a) (Supp. 2000) provides, in pertinent part, 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[.]"

In considering whether evidence adduced at trial is sufficient to support a conviction, we are guided by the following principles:

On appeal, the test for a claim of insufficient evidence is whether, viewing the evidence in the light most favorable to the State, there is substantial evidence to support the conclusion of the trier of fact.
State v. Ildefonso, 72 Haw. 573, 576, 827

P.2d 648, 651 (1992); *State v. Tamura*, 63 Haw. 636, 637, 633 P.2d 1115, 1117 (1981). "It matters not if a conviction under the evidence as so considered might be deemed to be against the weight of the evidence so long as there is substantial evidence tending to support the requisite findings for the conviction.'" *Ildefonso*, 72 Haw. at 576-77, 827 P.2d at 651 (quoting *Tamura*, 63 Haw. at 637, 633 P.2d at 1117). "'Substantial evidence' . . . is credible evidence which is of sufficient quality and probative value to enable a man of reasonable caution to reach a conclusion." See *id.* 72 Haw. at 577, 827 P.2d at 651 (quoting *State v. Naeole*, 62 Haw. 563, 565, 617 P.2d 820, 823 (1980)).

State v. Matias, 74 Haw. 197, 207, 840 P.2d 374, 379 (1992).

"Furthermore, '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[.]'" *Tachibana v. State*, 79 Hawai'i 226, 239, 900 P.2d 1293, 1306 (1995) (citation omitted).

In applying the foregoing principles to this case, we observe that the court characterized this case as "one of credibility[.]" This being so, we will not disturb, and Traxler does not dispute, the court's finding that during their argument, Traxler threw a plate at Medina which struck her in the knee and caused her "physical pain[.]" Being well supported by substantial evidence as summarized above, the element of "offensive physical contact" was established.

Traxler focuses instead on the court's finding that he "did intend to annoy, harass, or alarm Ms. Medina and subject her

to offensive physical contact[.]” Traxler argues that there was not substantial evidence to support such a finding because

there was no evidence as to how Mr. Traxler “threw” the plate or that he made any statements to evidence his specific intent at the time the plate left his hand. Mr. Traxler may have intended to throw the plate on the floor, throw the plate on the couch near [Medina], or throw the plate past her to show his displeasure. If Mr. Traxler did not intend to cause the plate to make some sort of offensive physical contact with [Medina] and to do so with the specific intent to harass, annoy or alarm her, then he could not have been found guilty of harassment. Although the court was permitted to make reasonable inferences in reaching its conclusion, the paucity of evidence should have precluded it from making such a specific finding on the issue of intent, especially an intent so specific as that required for a harassment conviction.

We disagree. There is no requirement in the law that the elemental intent be established by evidence of the manner in which the plate was thrown or the words accompanying the action.

The court found that Traxler threw the plate at Medina instead of dropping it accidentally, as he had claimed at trial. There was, *ipso facto*, substantial evidence that he intended to thereby harass, annoy or alarm her.

In addition, other evidence at trial, taken in the light most favorable to the State, shows that there was substantial, nay ample, evidence of the incriminating *mens rea*.

Traxler returned home from work late, emotionally and physically drained. This state became augmented by anger as he endured at least an hour of nagging from Medina. What is worse,

the nagging interfered with the hungry man's attempt to eat. The emotional impetus for striking back is clear. In addition, Traxler was looking directly at Medina as he threw the plate at her, which indicates purpose, as does the evidence that the plate shattered upon impact with her knee and caused pain.

We conclude, therefore, that the evidence at trial was sufficient to support Traxler's conviction.

III. Conclusion.

Based on the foregoing, the November 17, 1999 judgment is affirmed.

DATED: Honolulu, Hawaii, February 8, 2001.

On the briefs:

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

Acting Chief Judge

Alexa D. M. Fujise,
Deputy Prosecuting Attorney,
for plaintiff-appellee.

Associate Judge

Associate Judge