

NO. 23419

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
STEPHANIE RINZLER, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 00-1-1289)

MEMORANDUM OPINION

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

On February 18, 2000, Defendant-Appellant Stephanie Rinzler (Stephanie) was charged by complaint with Harassment in violation of Hawai'i Revised Statutes (HRS) § 711-1106(1) (a) (Supp. 2000).¹ A jury-waived trial before Judge I. Norman Lewis

¹ HRS § 711-1106 provides, in relevant part, as follows:

§711-1106 Harassment. (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

- (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
- (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
- (c) Repeatedly makes telephone calls, facsimile, or electronic mail transmissions without purpose of legitimate communication;
- (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;
- (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or
- (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

of the Family Court of the First Circuit (the family court) was held on March 9, 2000. Stephanie was found guilty as charged, sentenced to six months of probation, and ordered to pay a Criminal Injuries Compensation Commission fee of \$25.00 and to undergo domestic violence intervention and parenting classes. Judgment was entered on March 9, 2000, and the sentence was stayed pending appeal. On appeal, Stephanie contends the family court committed plain error because (1) it applied the wrong legal standard to the intent element of Harassment, and (2) the evidence adduced at trial was legally insufficient to support the family court's finding of criminal intent under HRS § 711-1106(1)(a). We disagree with Stephanie's contentions and affirm the March 9, 2000, Judgment of the family court.

I. BACKGROUND

The complaining witness in the case, Dr. Gary Rinzler (Gary), testified that on February 17, 2000, he and his wife, Stephanie, (collectively "the Rinzlers") argued over the discipline of Gary's two children (ages six and ten) from a prior marriage. In addition to those children, the Rinzlers also have a baby girl from their marriage. "[D]isciplining our kids" is a topic the Rinzlers "always fight over" because they have different ideas regarding whether to discipline the children strictly or more tolerantly and flexibly. Gary described himself as "being my belligerent self" that evening. Gary was putting

the older children to bed while he and Stephanie argued. Gary gave Stephanie a look to indicate "not in front of the kids." Gary tried to get the children to bed and then he and Stephanie went outside, although he was unable to remember who initiated going outside. Gary walked out to a deck that is about eight inches off the ground in the backyard. He may have smoked a cigarette while standing out there. Stephanie "was fighting and, you know, my attitude was kind of like, [n]ot so loud, the neighbors are here." Gary wasn't listening to Stephanie. Stephanie grabbed his arm saying, "[t]his is important. Listen to me." That caught Gary off guard, and he described both of them as mad because he "kind of like was, you know, don't -- you know, don't grab my arm, you know." Stephanie then stepped off the deck (Gary did not remember whether she fell or not), but as she stepped off she grabbed and pinched Gary's arm "really hard to like balance and, you know, falling." Gary attributed the streaks on his arm to her grabbing him and described himself as "a really easy bruiser."

Gary testified that Stephanie never stated during the argument that she hates his kids or that she does not want to be around them. The Rinzlers talked for a while during the argument about the possibility of Stephanie taking their baby to Minnesota where her parents reside as soon as she can afford it.

Gary identified State's exhibit 1 as a written statement he wrote out, signed, and voluntarily gave to the police at about 8 p.m. on February 17, 2000 (the statement). Gary acknowledged he wrote on the statement that Stephanie was yelling at the children and took away their Nintendo. That was part of the argument; he told Stephanie she was wrong to take away the children's Nintendo. Gary admitted he wrote the following on the statement:

1. "She came in -- in the room and was speaking abusively, so I guided her with one finger into the hallway so the kids wouldn't hear."
2. "She went nuts and started punching and kicking, telling me, Don't you dare touch me."²
3. "[S]he went into the living room and wanted to talk and smoke a cigarette. So went out back on the porch so we could talk through the open window."
4. "She came out to get me and started grabbing my arm, pinching so hard. I shook my arm for her to let go and she fell down one foot on the deck."
5. "When I got home tonight, she was fuming, stating I don't help her with the baby enough."
6. "She told me she hates my kids, boys, age 6 and 10, from prior marriage and does not want to be around them."
7. "She stated she's taking the baby and going home to Minnesota as soon as we get 4,000 needed. And I agreed that would be okay."

² At trial, Gary testified that Stephanie "didn't really" start punching or kicking him while they stood on the deck.

The statement was admitted into evidence as State's exhibit 1. Photographs of Gary's injured right arm taken by police were admitted into evidence as State's exhibit 2.

Under cross-examination, Gary testified that when he and Stephanie reached the outside deck, Stephanie wanted to get his attention to discuss with him the raising of the children. Gary turned away from her, and she grabbed his arm to get his attention and get him to listen to her. Gary swung his arm, causing Stephanie to lose her balance, and she grabbed his arm tighter as she fell backwards. Gary believed that caused the bruise depicted in the photograph introduced as State's exhibit 2. Gary testified that other than Stephanie grabbing his arm, there was no other physical confrontation that night. When the police originally asked him what part of his body was injured, Gary first responded his right arm, then subsequently responded "nothing really." Gary testified that neither he nor his wife are capable of hurting the other beyond a couple of scratches. Gary believed that the incident was "just a drama call she did to show me how angry" she was. The Rinzlers have no prior history of domestic abuse or of any complaints filed with the police. The incident was the culmination of being "a little overwhelmed" with a new baby and the two older children arriving in the home a month after the baby's birth. Gary did not believe that Stephanie injured him intentionally.

Stephanie testified on her own behalf. Stephanie testified that on February 17, 2000, she and Gary got into an argument after she removed the children's Nintendo from their room because Gary allows them to play Nintendo "all day long" and she believes the children should be "outside playing, not continuously playing Nintendo." Gary gave Stephanie "the look like, [n]ot in front of the kids." Stephanie asked Gary "in a nice manner" to go outside with her; once outside, they began to argue. Stephanie stated that Gary began smoking a cigarette and it appeared to her that he was not listening to her, so she grabbed his arm to get his attention. Stephanie was near the edge of the deck and began to fall. As she fell, she grabbed Gary's arm "fairly hard" and "most likely did give him a bruise on his right arm." Stephanie called 911 out of anger, misunderstanding the "State of Hawai'i law." Stephanie believed calling the police "was to basically settle the situation down." Stephanie testified that she did not punch or kick Gary. Stephanie agreed with Gary's testimony that neither of them is capable of hurting the other beyond a couple of scratches and that her call to the police was "a drama call" to show her husband how angry she was.

Under cross-examination, Stephanie testified that it was her idea that Gary's two older children come from Seattle to live with the Rinzlers because Stephanie believed it was best for

the children's safety -- their mother was overwhelmed and her alimony had run out. Stephanie testified that she and Gary get along with the children. The Nintendo playing was the source of the problem that night, and, as she tried to talk to Gary, they began arguing in the hallway because he did not want to talk about it. Stephanie did not like that Gary touched her in a forceful manner by poking her with his finger; she told him "[d]on't you dare touch me." They went out to the deck together, where Stephanie became "mad" because Gary was ignoring her. Stephanie testified that she did not slap or kick Gary or use the "F" word in the children's presence that night.

After trial counsel submitted the case to the court on the record, the court stated that it had the opportunity to:

-- review its own notes and reviewed the records in this case and it had some chance to review the evidence. Based upon what I've read, reviewed, and what I've heard here in this particular case, the Court finds that the State has sustained its burden here. The Court will find the defendant guilty as charged. Court will find that the defendant had committed the offense of Harassment.

Following sentencing, defense counsel requested that the court make a finding of fact. The court stated:

The Court will find from the totality of the evidence that -- and prosecutor, you'll prepare the proposed findings of fact and conclusions of law -- that the defendant did touch the person or the complaining witness in a manner which would annoy or alarm that particular individual. This is an objective standard, not a subjective standard. And that is what the Court is going on.

. . . .

And it took place in the City and County of Honolulu.

. . . .

Court will find as a conclusion of law based upon the evidence the defendant did annoy and alarm the person or the complaining witness by touching the other person in an offensive manner and also the person was subjected to offensive physical contact. Again, my standard is objective.

II. STANDARD OF REVIEW

A. Plain Error

Hawai'i Rules of Penal Procedure Rule 52(b) states that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Therefore, an appellate court "may recognize plain error when the error committed affects substantial rights of the defendant." State v. Davia, 87 Hawai'i 249, 253, 953 P.2d 1347, 1351 (1998) (internal quotation marks omitted). See also Hawai'i Rules of Evidence Rule 103(d) (same).

The appellate court "will apply the plain error standard of review to correct errors which seriously affect the fairness, integrity, or public reputation of judicial proceedings, to serve the ends of justice, and to prevent the denial of fundamental rights." State v. Vanstory, 91 Hawai'i 33, 42, 979 P.2d 1059, 1068 (1999) (internal quotation marks omitted).

B. Findings of Fact/Conclusions of Law

The appellate court reviews a trial court's findings of fact under the "clearly erroneous" standard of review. Dan v. State, 76 Hawai'i 423, 428, 879 P.2d 528, 533 (1994).

A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made.

State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995) (citations and internal quotation marks omitted). "The circuit court's conclusions of law are reviewed under the right/wrong standard." State v. Pattioay, 78 Hawai'i 455, 459, 896 P.2d 911, 915 (1995) (citation omitted).

State v. Anderson, 84 Hawai'i 462, 467, 935 P.2d 1007, 1012 (1997). "A conclusion of law that is supported by the trial court's findings of fact and that reflects an application of the correct rule of law will not be overturned." Dan, 76 Hawai'i at 428, 879 P.2d at 533 (internal quotation marks omitted).

C. Sufficiency of the Evidence

Regarding appellate review for insufficient evidence, the Hawai'i Supreme Court has repeatedly stated:

[E]vidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support the conviction; the same standard applies whether the case was before a judge or jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact.

State v. Quitog, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997) (quoting State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996)) (emphasis omitted). "'Substantial evidence' as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." Eastman, 81 Hawai'i at 135, 913 P.2d at 61.

State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998).

III. DISCUSSION

A. Standard of Proof Necessary to Prove Intent

Hawai'i Revised Statutes § 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: (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact." (Emphasis added.) The State was required to prove all elements of the offense.

HRS § 701-114(1) (a) and (b) (1993) requires proof beyond a reasonable doubt of each element of the offense, as well as the state of mind required to establish each element of the offense. Moreover, HRS § 702-204 (1993) provides in relevant part that "a person is not guilty of an offense unless the person acted intentionally, knowingly, recklessly, or negligently, as the law specifies with respect to each element of the offense." ... HRS § 702-207 (1993) provides that "[when] the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears." In addition, pursuant to HRS § 702-205 ..., the requisite state of mind applies to such conduct, attendant circumstances, and results of conduct as are specified by the definition of the offense.

State v. Hoang, 86 Hawai'i 48, 58, 947 P.2d 360, 370 (1997)

(brackets and ellipses in original) (quoting State v. Arceo, 84 Hawai'i 1, 14, 928 P.2d 843, 856 (1996)). Moreover, the Hawai'i Supreme Court has stated that intent "is subjective, although it is usually proved by inference from the acts of the accused."

State v. Robins, 66 Haw. 312, 314, 660 P.2d 39, 41 (1983).

In convicting Stephanie of Harassment, the family court found "that the defendant did touch the person or the complaining

witness in a manner which would annoy or alarm that particular individual. This is an objective standard, not a subjective standard. And that is what the Court is going on." The family court also stated in its conclusion of law that "the defendant did annoy and alarm the person or the complaining witness by touching the other person in an offensive manner and also the person was subjected to offensive physical contact. Again, my standard is objective."

Stephanie contends that the family court committed plain error in convicting her of violating HRS § 711-1106(1) (a) because it applied an objective, rather than a subjective, standard in determining that she had the requisite intent to commit Harassment. We disagree.

Since Stephanie failed to challenge the standard at trial, the plain error analysis applies to this court's review. The Hawai'i Supreme Court in State v. Kelekolio, 74 Haw. 479, 849 P.2d 58 (1993), stated:

This court's power to deal with plain error is one to be exercised sparingly and with caution because the plain error rule represents a departure from a presupposition of the adversary system -- that a party must look to his or her counsel for protection and bear the cost of counsel's mistakes. Nevertheless, where plain error has been committed and substantial rights have been affected thereby, the error may be noticed even though it was not brought to the attention of the trial court.

Id. at 515, 849 P.2d at 74-75 (citation omitted).

Reviewing the family court's ruling, it is evident to us that the objective standard was applied by the family court in

evaluating whether there was substantial evidence that a reasonable person in Gary's situation would have been offended by the physical contact inflicted by Stephanie. That is, whether Gary was actually offended was not the test. The family court did not apply the objective standard to Stephanie's state of mind and whether she had the requisite intent to harass, annoy, or alarm Gary by touching him. Indeed, the family court did not refer to any particular standard in evaluating whether Stephanie intended to harass, annoy, or alarm Gary. The Hawai'i Supreme Court has held that where a "trial court did not refer to any standard of proof, but merely commented on the nature of the evidence in support of the finding of guilt, a presumption arises that it applied the correct standard." State v. Aplaca, 74 Haw. 54, 66, 837 P.2d 1298, 1305 (1992).

We similarly conclude that because the family court did not indicate whether it was applying an objective standard in assessing Stephanie's intent to commit the crime of Harassment, a presumption arises that it applied the correct subjective standard.

B. Sufficiency of the Evidence

The intentional state of mind element requires a subjective standard of proof. Hawai'i Revised Statutes § 702-206(1) (1993) defines the intentional state of mind as follows:

§702-206 Definitions of states of mind. (1) "Intentionally."

- (a) A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.
- (b) A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes or hopes that they exist.
- (c) A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

Stephanie argues there was legally insufficient evidence adduced at trial to support the family court's finding that she harassed Gary intentionally. We review the sufficiency of evidence to support a conviction in the light most favorable to the State. State v. Stocker, 90 Hawai'i 85, 90, 976 P.2d 399, 404 (1999). "The test on appeal is . . . whether there was substantial evidence to support the conclusion of the trier of fact." State v. Batson, 73 Haw. 236, 248, 831 P.2d 924, 931 (1992).

The Hawai'i Supreme Court has stated that given the difficulty of proving the requisite state of mind by direct evidence in criminal cases, "[w]e have consistently held that . . . proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the [defendant's conduct] is sufficient Thus, the mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances." State v. Sadino, 64 Haw. 427, 430, 642 P.2d 534, 536-37 (1982) (citations omitted); see also State v. Simpson, 64 Haw. 363, 373 n.7, 641

P.2d 320, 326 n.7 (1982); State v. Yabusaki, 58 Haw. 404, 409, 570 P.2d 844, 847 (1977).

While the State offered no direct evidence of Stephanie's state of mind when Stephanie allegedly harassed Gary, it was not necessary that the State do so to prove that she acted intentionally. "Given the difficulty of proving the requisite state of mind by direct evidence in criminal cases, . . . proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient." Batson, 73 Haw. at 254, 831 P.2d at 934 (brackets omitted).

The State introduced evidence that on February 17, 2000, Gary made a voluntary written statement to the police that Stephanie came into the children's room "speaking abusively" and saying "she hates my kids" and "does not want to be around them." In response to Gary's guiding her out of the children's room "with one finger" into the hallway so the children would not hear them, "[s]he went nuts and started punching and kicking." Gary also admitted that he wrote on the voluntary statement form that "[s]he came out to get me and started grabbing my arm, pinching so hard. I shook my arm for her to let go and she fell down one foot on the deck." Stephanie testified that she grabbed Gary's arm "fairly hard" and "most likely did give him a bruise on his right arm."

The State introduced substantial evidence that Stephanie subjectively intended to harass Gary in violation of HRS § 711-1106(1) (a).

IV. CONCLUSION

Accordingly, we affirm the March 9, 2000, Judgment of the family court.

DATED: Honolulu, Hawai'i, August 28, 2001.

On the briefs:

Tracy S. Fukui,
Deputy Public Defender,
for defendant-appellant.

Chief Judge

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge