

NO. 23597

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
RANDAL P. CHUN FAT, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT  
(CR. NO. 99-1043)

MEMORANDUM OPINION

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

On June 9, 1999, Defendant-Appellant Randal P. Chun Fat (Chun Fat) was charged by complaint in the Circuit Court of the First Circuit (circuit court) with the following:

Count I, Driving Under the Influence of Intoxicating Liquor, in violation of Hawaii Revised Statutes (HRS) § 291-4(a)(1) (Supp. 2000)<sup>1</sup>; and

Count II, Criminal Property Damage in the Third Degree, in violation of HRS § 708-822(1)(b) (Supp. 2001)<sup>2</sup>.

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<sup>1</sup> HRS § 291-4(a)(1) provides:

**§291-4 Driving under the influence of intoxicating liquor.**

(a) A person commits the offense of driving under the influence of intoxicating liquor if:

- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty[.]

<sup>2</sup>HRS § 708-822 provides in relevant part as follows:

**§708-822 Criminal property damage in the third degree.**

(1) A person commits the offense of criminal property damage in the third degree if:

- (b) . . . . The person intentionally damages the property of another, without the other's consent, in an amount exceeding \$500.
- (2) Criminal property damage in the third degree is a misdemeanor.

Following a jury trial before Judge Russell Blair, on April 24, 2000, Chun Fat was acquitted as to Count I, found guilty as to Count II, sentenced to one year of probation, fined \$100.00, and ordered to pay a Crime Victim Compensation Commission fee of \$50.00. Judgment was entered on June 19, 2000.

On appeal, Chun Fat contends the circuit court committed plain error because prosecutorial misconduct prejudiced his right to a fair trial and the evidence adduced at trial was legally insufficient to support the jury's finding of criminal intent under HRS § 708-822(1)(b). We disagree with Chun Fat's contentions and affirm the June 19, 2000, Judgment of the circuit court.

#### **I. BACKGROUND**

Honolulu Police Department Officer Robert Daclison (Officer Daclison) testified that on April 14, 1999, he and his partner, Officer Brad Heatherly (Officer Heatherly), assisted other police officers in an argument case on Kuhio Avenue. Officer Daclison saw an ambulance in front of a nightclub on Kuhio Avenue (Nightclub) down the street from the argument and went to see if he could help. When he reached the Nightclub, Officer Daclison observed Chun Fat sitting on some steps with another male, identified as Herbert Julian (Julian), standing next to Chun Fat. Chun Fat was arguing with ambulance personnel

(paramedics) regarding his request that the paramedics transport him to the hospital.

Officer Daclison testified he heard Chun Fat state that he was having "a lupus attack," his "equilibrium was off," he could not stand or walk, and he wanted to go to the hospital. Paramedics questioned Chun Fat to gain information from him regarding whether he could go to the hospital by himself or have Julian take him, thereby saving himself four or five hundred dollars. This angered and upset Chun Fat, who shouted and swore at the paramedics, using "F--- words" and calling the female paramedic a "bitch." When the argument grew heated, Officer Daclison stepped in and tried to calm Chun Fat, telling the paramedics to take him to the hospital. Chun Fat then stood up and said, "That's all right; they don't like take me, I just going take myself," adding that if he got into an accident and either hurt or killed himself, he would "sue the ambulance company." Chun Fat and Julian walked away. Chun Fat did not require assistance getting up or walking away and walked away in a relatively straight line. Officers Daclison and Heatherly left to go eat.

Officer Heatherly testified that Chun Fat was "very argumentative" and "combative," calling the female paramedic a "f---ing bitch" and a "haole bitch." Chun Fat grabbed the keys from Julian and said, "Come on, that's it. Let's go. I'm going

to St. Francis where I belong." Chun Fat added something like "I'm going to get into my car and get into an accident right here."

Marc Litchfield (Litchfield) testified that on April 14, 1999, he was working as "a doorman security guy" at a nightclub (the club) on the corner of Kuhio and Seaside Avenues. Between 1:00 and 2:00 a.m., his attention was drawn to a number of people standing outside at the Nightclub (next door to the club), where there "was a guy on the sidewalk." Litchfield walked over to see if the guy "was okay." A number of people tried to help the guy off the sidewalk, but he was not "really responding one way or the other." Litchfield saw and heard the paramedics interacting with Chun Fat, "[a]nd for whatever reason [Chun Fat] became verbally abusive." Litchfield heard Chun Fat say, "[w]hat if I get in my car and come back here and crash into the building?" Chun Fat and Julian then walked away.

Litchfield testified that within fifteen minutes of the incident, he was back on the corner of Seaside and Kuhio Avenues in front of the club when he saw Chun Fat driving a car, which was heading straight for him. Chun Fat's vehicle "veered up over the sidewalk and kind of came up on the sidewalk and slid down the restaurant part of the building." Litchfield testified:

I mean, it was obvious to me that he literally was coming at the building. You could tell by the way he was driving that he wasn't going to make the turn, you know. He did not have his turn signal on or anything. It was a beeline for the building.

Officer Daclison testified that while he and Officer Heatherly were going to eat, they received a call from police dispatch directing them to an accident at the intersection of Seaside and Kuhio Avenues. Officer Daclison testified he was thinking, "don't tell me that is the same guy who just said he might get into an accident." When he got to the intersection, there was a dark colored Honda Prelude facing in the "Diamond Head" direction (east) up on the sidewalk next to the building which housed the Seafood Bar & Grill (Grill).

Officer Daclison testified that when he approached the Honda, he saw Chun Fat sitting in the driver's seat and Julian in the passenger seat. Chun Fat sat with the driver's seat reclined, his hand over his face, "kind of moaning." Chun Fat said, "Oh, I called the ambulance earlier because I wanted them to take me to the hospital. And they did not want to. And now look what happened. I got into this accident." Chun Fat spoke with a calm voice and kept repeating that he had called the paramedics and they did not want to take him to the hospital, so he had to drive himself and got into this accident. Officer Daclison smelled a slight odor of alcoholic beverage from Chun Fat's breath and noticed that Chun Fat's eyes were a bit red and glassy.

Officer Daclison testified that he also observed Julian with red, glassy eyes and a slight odor of alcoholic beverage

coming from his breath. When Officer Daclison asked Julian what happened, Julian responded that he was scared and he did not know how they got into that position. Julian did not want to say anything else to Officer Daclison.

Officer Daclison testified that Officer Heatherly arrested Chun Fat. Chun Fat complained that he was not feeling well, was having an equilibrium attack, and wanted to be taken to the hospital. Officer Daclison called an ambulance pursuant to Chun Fat's request, although Officer Daclison was unable to determine whether Chun Fat was injured. Chun Fat did not seem like he was having some kind of attack.

Officer Daclison testified that the building Chun Fat hit housed the Grill and sustained the following damage: a water spigot or pipe was broken off, causing water to gush from it (about an hour later the Board of Water Supply turned off the water); the building had scrape marks and areas where cement chips came out; and a metal railing at the entrance to the Grill was bent out of shape.

David Chau (Chau), one of the owners of the Grill, testified that his insurance company assessed the damage to the property following the accident. Chau stated he did not give Chun Fat permission to damage the property. Insurance adjustor Maxine Holland LaFlamme testified that she assessed the damage

following the accident and that the cost to repair the damage to the Grill totaled approximately \$1,740.00.

## II. STANDARDS OF REVIEW

### A. Prosecutorial Misconduct

Allegations of prosecutorial misconduct are reviewed under the harmless beyond a reasonable doubt standard, which requires an examination of the record and a determination of whether there is a reasonable possibility that the error complained of might have contributed to the conviction. Factors to consider are: (1) the nature of the conduct; (2) the promptness of a curative instruction; and (3) the strength or weakness of the evidence against the defendant.

State v. Rogan, 91 Hawai'i 405, 412, 984 P.2d 1231, 1238 (1999) (internal quotation marks and citations omitted) (quoting State v. Sawyer, 88 Hawai'i 325, 329 n.6, 966 P.2d 637, 641 n.6 (1998)).

"Prosecutorial misconduct warrants a new trial or the setting aside of a guilty verdict only where the actions of the prosecutor have caused prejudice to the defendant's right to a fair trial." State v. McGriff, 76 Hawai'i 148, 158, 871 P.2d 782, 792 (1994). "In order to determine whether the alleged prosecutorial misconduct reached the level of reversible error, we consider the nature of the alleged misconduct, the promptness or lack of a curative instruction, and the strength or weakness of the evidence against defendant." State v. Agrabante, 73 Haw. 179, 198, 830 P.2d 492, 502 (1992).

### B. Plain Error

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.

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.

State v. Lewis, 94 Hawai'i 309, 313, 12 P.3d 1250, 1254 (App.), aff'd, 94 Hawai'i 292, 12 P.3d 1233 (2000) (internal quotation marks and citations omitted) (quoting State v. Vanstory, 91 Hawai'i 33, 42, 979 P.2d 1059, 1068 (1999)).

### **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 a 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. Prosecutorial Misconduct**

Chun Fat contends the State's misstatement of the law amounted to plain error that affected his right to a fair trial.

Specifically, Chun Fat complains that the "Prosecutor, on rebuttal, blatantly misstated the law applicable to the state of mind requirement for the charge of Criminal Property Damage in the Third Degree."

Since Chun Fat failed to object to the State's comment during rebuttal at trial, the plain error analysis applies to this court's review. We "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." Lewis, 94 Hawai'i at 313, 12 P.3d at 1254 (internal quotation marks omitted).

In his opening brief, Chun Fat points to the prosecutor's following statement as plain error:

The complaint for criminal property damage in the third degree reads as follows: That on or about April 14, 1999, in the City and County of Honolulu, State of Hawaii, Randal P. Chun Fat did intentionally damage Sandstorm, Inc, d\b\a Seaside Bar & Grill, that defendant did so without consent of Sandstorm, Inc, d\b\a Seaside Bar & Grill. Defendant did so intentionally. And the amount exceeded \$500. *It doesn't show, it does not say, he -- intentionally goes to the other elements.* Defendant did so intentionally refers to causing damage to property.

(Emphasis added in opening brief.)

The judge properly instructed the jury regarding the necessary four elements the State had the burden of establishing beyond a reasonable doubt to sustain a conviction under HRS § 708-822(1)(b). Moreover, immediately following the circuit

court's instruction on the elements of the criminal property damage charge, the circuit court instructed the jury that:

A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.

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.

A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

It is presumed that the jury adhered to the court's instructions. State v. Kahalewai, 55 Haw. 127, 129, 516 P.2d 336, 338 (1973). Even though the prosecutor's remarks may have been improper, any harm or prejudice that may have resulted to Chun Fat was cured by the circuit court's instructions to the jury. Therefore, we conclude that the prosecutor's remarks did not seriously affect the fairness, integrity, or public reputation of the circuit court proceedings or in any way deny Chun Fat his fundamental rights.

#### **B. Sufficiency of the Evidence**

Chun Fat contends that insufficient evidence was adduced at trial to support the conviction under HRS § 708-822(1)(b) because the State failed to prove he acted intentionally. Chun Fat contends the record lacks substantial evidence to support his conviction because the State failed to prove that Chun Fat intended to damage the Grill or cause the resulting damage in excess of \$500.00.

Hawaii Revised Statutes § 702-206 (1993) defines

"intentionally" as:

**§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.

It is not necessary for the State to introduce direct evidence of a defendant's state of mind in order to prove the defendant acted intentionally, knowingly or recklessly. State v. Eastman, 81 Hawai'i 131, 140-41, 913 P.2d 57, 66-67 (1996). The Hawai'i Supreme Court has stated that given the difficulty of proving the requisite state of mind by direct evidence in criminal cases:

We 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).

The jury found the State proved beyond a reasonable doubt that Chun Fat did engage in intentional conduct, which did cause the property damage to another in excess of \$500.00. The State introduced substantial evidence, which the jury found credible, that Chun Fat became angry at the paramedics for

questioning his need for an ambulance. Chun Fat yelled at the paramedics, stating that he would drive himself to the hospital and that if he got into an accident and either hurt or killed himself, he was going to sue the ambulance company. Litchfield heard Chun Fat say, "[w]hat if I get in my car and come back here and crash into the building?" Moments later, Litchfield saw Chun Fat driving in "a beeline for the building." The damage to the building was consistent with the testimony and supports a finding that it was Chun Fat's conscious object to cause such a result. Therefore, the jury properly inferred that Chun Fat damaged the property of another, without the other's consent, in an amount exceeding \$500.00, with the requisite state of mind (intentional) to support a conviction under HRS § 708-822(1) (b).

#### **IV. CONCLUSION**

Accordingly, the June 19, 2000, Judgment of the circuit court is affirmed.

DATED: Honolulu, Hawai'i, March 19, 2002.

On the briefs:

Cindy A. L. Goodness,  
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