

NOS. 24033 and 24034

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CECILIA E. VINCENT, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NOS. 00-01-2554 AND 00-01-2153)

SUMMARY DISPOSITION ORDER

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

In this consolidated appeal, Defendant-Appellant Cecilia E. Vincent (Vincent) appeals from the Judgment filed December 20, 2000 in FC-CR No. 00-1-2554 (No. 2554), in which Vincent was found guilty of Violation of an Order for Protection (Hawaii Revised Statutes (HRS) § 586-11 (2001)); and from the "Order Granting Motion to Set Aside DAG and Acceptance of Defendant's Guilty Plea" filed December 20, 2000 in FC-CR No. 00-1-2153 (No. 2153), in which Vincent was found guilty of Criminal Contempt of Court (HRS § 710-1077(g) (1993)), in the Family Court of the First Circuit¹ (family court).

On appeal, Vincent contends that the family court (1) committed plain error in failing to instruct the jury that it had to unanimously agree on the alleged conduct of Vincent that was in violation of the Order for Protection (Order); (2) reversibly

¹The Honorable Michael D. Wilson presided.

erred in instructing the jury to continue with its deliberations after the members of the jury stated they were unable to reach a verdict; (3) relied on insufficient evidence to establish that Vincent intentionally or knowingly engaged in conduct prohibited by the Order; and (4) erred in setting aside Vincent's deferred acceptance of guilty plea in No. 2153 where the conviction in No. 2554 was erroneous. We disagree with Vincent's contentions and affirm the December 20, 2000 Judgment and the December 20, 2000 "Order Granting Motion to Set Aside DAG and Acceptance of Defendant's Guilty Plea" of the family court.

Upon careful review of 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 resolve Vincent's points of error as follows:

(1) Vincent contends the family court committed plain error by giving the jury an instruction that "failed to specify the specific conduct which constituted the violation of the Order of Protection or alternatively to provide a unanimity instruction." The record indicates that the jury was properly instructed on unanimity, i.e., "an instruction that advises the jury that all twelve of its members must agree that the same underlying criminal act has been proved beyond a reasonable

doubt."² State v. Arceo, 84 Hawai'i 1, 32-33, 928 P.2d 843, 874-75 (1996). The instructions given were not "prejudicially insufficient, erroneous, inconsistent, or misleading." State v. Valentine, 93 Hawai'i 199, 204, 998 P.2d 479, 484 (2000) (internal quotation marks omitted).

(2) Vincent contends the family court reversibly erred in instructing the jury to continue deliberations after the jury "unequivocally stated that they were unable to reach a unanimous verdict." The family court properly informed jurors as to their duty to deliberate and properly instructed them to re-read the particular instruction that pertained to jury deliberations. State v. Fajardo, 67 Haw. 593, 601, 699 P.2d 20, 25 (1985).

(3) Vincent contends insufficient evidence established that Vincent intentionally or knowingly engaged in conduct prohibited by the Order. The record contains substantial credible evidence to support the jury's conclusion that Vincent's contact was not accidental. Viewing the evidence in the light

²Regarding unanimity, the family court instructed the jury as follows:

The defendant is charged with the offense of violation of an order for protection. The prosecution may or may not have introduced evidence that could show more than one act upon which a guilty verdict as to this offense could be based.

In order to return a guilty verdict as to this offense, it is necessary that the jury unanimously agree that the same act, along with all other necessary elements of the offense, has been proven by the prosecution beyond a reasonable doubt. In other words, if a portion of the jury agrees to one act and a portion agrees to another, then you are not unanimous and this element has not been proven beyond a reasonable doubt and you must find the defendant not guilty.

most favorable to the State, and in full recognition of the province of the trier of fact, we conclude that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995).

(4) Vincent contends the family court erroneously set aside her deferred acceptance of guilty plea (DAG plea) in No. 2153 because her conviction in No. 2554 was erroneous. On December 15, 2000, while her deferral period was in effect, Vincent was found guilty of violating the Order, thus violating the terms of her DAG plea. The family court did not abuse its discretion in revoking Vincent's DAG plea, accepting her guilty plea, and convicting and sentencing her accordingly. State v. Putnam, 93 Hawai'i 362, 368, 3 P.3d 1239, 1245 (2000).

Therefore,

IT IS HEREBY ORDERED that the December 20, 2000 Judgment and the December 20, 2000 "Order Granting Motion to Set Aside DAG and Acceptance of Defendant's Guilty Plea" of the family court is affirmed.

DATED: Honolulu, Hawai'i, August 9, 2002.

On the briefs:

Michelle L. Agsalda
for defendant-appellant.

Alexa D.M. Fujise,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Chief Judge

Associate Judge

Associate Judge