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NO. 24362

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
CURTIS MAKOTO YAMURA, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-CR NO. 01-1-1220)

MEMORANDUM OPINION

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

Defendant-Appellant Curtis Makoto Yamura (Yamura) appeals from the May 23, 2001 Judgment of the Family Court of the First Circuit, State of Hawai'i (family court), finding him guilty of Abuse of Family or Household Members, Hawaii Revised Statutes (HRS) § 709-906 (2000), and sentencing him to two days in jail and one year probation. The sentence to two days in jail was stayed pending appeal.

On appeal, Yamura asserts that (1) there was insufficient evidence to disprove beyond a reasonable doubt the defense of parental discipline, defense of self, and defense of others, and (2) there was insufficient evidence to prove beyond a reasonable doubt that Yamura intentionally, knowingly, or recklessly caused injury to his twelve-year-old son. We affirm.

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BACKGROUND

On February 7, 2001, Plaintiff-Appellee State of Hawai'i (State), by Complaint, charged Yamura with Abuse of Family or Household Members, HRS § 709-906. On May 10, 2001, the case proceeded to a bench trial in the court of Judge Marcia J. Waldorf.

At trial, the State called the following witnesses to testify: Yamura's twelve-year-old son (Son); Lovey Ann DeRego (DeRego); and Christina Tangonan (Tangonan).

Son testified that on January 30, 2001, around 7:45 p.m., he was at home using the computer in the playroom. Yamura's fifteen-year-old daughter, and Son's sister (Daughter), came into the room and said she wanted to go on the computer. When Son "told her no[,]" Daughter "stormed off." Daughter returned, "called [Son] names and threw [him] off the chair" he was using. Son asserted that when Daughter threw him off the chair, he hit his head on the computer desk.

After Son got off the floor, Son chased Daughter into the bedroom of Yamura and the woman who was both Yamura's wife and Son's Mother (Mother). When Son and Daughter reached the bedroom, Yamura was lying on his bed, watching television.

In an attempt to "get back at [Daughter] for pushing [him] off the chair," Son threw an empty cardboard box at Daughter. Son testified that he never intended to hit Daughter; he "just

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intended to scare her." The empty cardboard box hit Yamura instead.

When he was hit by the box, Yamura got off the bed, "came after" Son, and "pinned [Son] against the metal safe" that was in the bedroom. Yamura held Son against the safe by placing his hands on Son's collarbone.

When Yamura "pinned" Son against the safe, Son "punched [Yamura] off" because Son "could sense [that Yamura] was starting to tension [(sic)] up in his hands about to squeeze [Son's] neck[.]" Son's punch caused Yamura to bleed. Yamura responded to Son's punch by punching Son with a closed fist, three times, twice in the left eye and once in the right cheek. Son stated that, in the scuffle, he also received scratches around the neck.

After Yamura punched Son, Yamura "pinned [Son] and then sat" on him while Daughter called the police. Son subsequently escaped and ran away to a friend's house.

DeRego, the principal of Son's school, testified that on January 31, 2001, she saw Son when he came to school at 8:45 a.m. DeRego stated that Son's eye was "swollen closed, closed shut," and that it did not look like he had showered at all in the last 24 hours. According to DeRego,

I invited [Son] to come into my office to talk about what had happened, and he came in and . . . explained to me that he had been on the run [the previous] evening and that there was a confrontation with his father. I immediately asked my secretary to get some ice for his eye to just alleviate the swelling because it was closed shut. And after he explained to me what had happened, then we called 911.

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On cross-examination, DeRego recounted what Son had told her in her office.

Tangonan, a Department of Human Services Child Welfare Services social worker, testified that on January 31, 2001, and February 9, 2001, she photographed Son's injuries. Upon proper authentication, the family court admitted the January 31, 2001, and February 9, 2001 photographs as State's Exhibits 1 and 2, respectively. The February 9, 2001 photograph showed that the bruising around Son's eye persisted approximately ten days after the January 30, 2001 incident.

The defense called the following witnesses to testify: Daughter, Mother, and Yamura.

Daughter testified that on January 30, 2001, when she came home, Son was in the playroom playing games on the computer. Daughter wanted to use the computer to check her e-mail so she asked Son if she could use the computer. When Son said no, Daughter "got mad" and took off of Son's head the headphones Son was wearing. Daughter then yelled at Son, "'Can I use the computer? . . . Let me use the computer[,]'" but Son did not respond to the yelling. Daughter said she "could tell [Son] was getting mad."

Daughter stated that she left the playroom without pushing Son off the chair he was using, but that when she left the room, Son "was running after me to I guess come and hurt me or,

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. . . try to get -- 'cause he was mad at me[.]" Daughter ran downstairs to Yamura's and Mother's bedroom so that Son "would maybe not hurt me [(Daughter)]." Son ran after Daughter and "pushed [her] . . . while [she] was running down the stairs."

When Daughter and Son reached the bedroom, Son "picked up a boom box [stereo] that was still in the box and tried to throw it at [Daughter]." The box hit Yamura in the back instead.

Daughter testified that Yamura walked over to Son and asked Son what he was doing. When Yamura tried to restrain Son by grabbing Son's shoulders, Son responded by punching Yamura several times, in the mouth and in the stomach. The punch to Yamura's mouth caused Yamura's lips to bleed. Yamura "automatically" reacted to Son's punches by punching Son once in the eye.

Following his punch to Son's eye, Yamura again tried to restrain Son by grabbing Son's shoulders. Following Yamura's instructions, Daughter went into another room to call the police. While Daughter called the police, Son managed to escape Yamura's grasp.

Mother testified regarding Son's "behavior, aggressiveness, incidents that happened at school, incidents that happened at home including an incident where . . . [Mother] was even unable to control [Son] and ended up where she got arrested for abuse of family/household member." Although the State objected to Mother's testimony on the grounds of relevance and, since Mother

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was not at home at the time of the incident, lack of personal knowledge, the court allowed Mother to testify about Son's past behavior and past aggressiveness.

Yamura testified that on January 30, 2001, after work, he was lying down on his bed "probably [taking] a short nap[.]" Yamura stated that when he "heard some loud noise and some yelling," he woke up. Yamura testified that Daughter came into his bedroom and Son appeared in the doorway looking "beet red," "totally almost like sunburned." According to Yamura, he had "never seen [Son] flush like that [before]."

Yamura stated that Son picked up a "boom box" that was "still boxed up" and tossed it "overhand . . . like throwing a football" at Daughter. The box "went over [Daughter's] head . . . and hit [Yamura] on the lower right back on [his] backside [instead]." When asked if the box caused him any pain, Yamura responded, "Um, not -- not a real intense pain but just, you know, like . . . a glancing blow type of thing."

Yamura testified that he asked Son, "'What are you doing?'" When Son was "shouting obscenities at [Daughter]" and "advancing" towards Daughter, Yamura "put [his] hands on [Son] to make sure [Son] did not [get] close to [Daughter]." Yamura "secured [Son] against [a] safe" in the bedroom by placing his hands on Son's "upper body by the collarbone."

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Yamura stated that when he "pretty much secured [Son] against the safe door," Son started to hit him in the face. When asked how many times Son hit him, Yamura replied, "I'm really not sure because after the first blow or two blows I had -- I kind of just reacted to try and protect myself." In trying to protect himself, Yamura "reacted instinctively" by hitting Son in the left eye. Yamura testified that (1) he did not know how hard or how many times he hit Son and (2) that Son was nearly the same height but not as big as he was.

Yamura then "wrestled [Son] to the floor[.]" When asked why, he explained:

A Because I realized that we were actually hitting each other, you know. It's like I came to realize I'm hitting my son because I had reacted instinctively to being hit, and I wasn't thinking yet. As soon as I deemed in my conscious thought, I knew . . . we shouldn't be doing this.

Q So you wrestled him down . . . with the intent of doing what?

A To . . . make sure that [Son] wasn't gonna do any more hitting on me or even attack [Daughter] because like I said the initial reason why I went to even . . . restrain him was because of his intent toward hurting [Daughter]."

To get control over Son, Yamura sat on him. Yamura instructed Daughter to "call the police right now because . . . [Son] hadn't stopped trying to hit [him]." While Daughter was calling the police, Son "struggled out" from under Yamura. After escaping, Son ran away from home.

After hearing closing arguments in which Yamura raised the defenses of "self-defense under [HRS §] 703-304[,], defense of others under [HRS §] 703-305[,], and reasonable parental discipline

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under [HRS §] 703-309," the family court ruled, in relevant part, as follows:

[T]his boy is twelve years old. He . . . may be almost as tall as [Yamura], but he's significantly smaller. He is imminently restrainable as was indicated. . . .

. . . The court is satisfied that the charge [of Abuse of Family or Household Member] is proved beyond a reasonable doubt and that the defenses are disproved beyond a reasonable doubt.

. . . .

. . . And by the way just in terms of the self-defense and defense of others, it was unreasonable use of force in the exercise of whatever could be perceived as any threat to the sister or to the much larger father. In fact the sister's larger too.

On June 21, 2001, Yamura filed his notice of appeal. On July 25, 2001, the family court entered its Findings of Fact and Conclusions of Law that stated, in relevant part, as follows:

FINDINGS OF FACT

. . . .

3. . . . Yamura tried to restrain [Son], after, . . . a box thrown at the sister hit [Yamura].

4. While doing so, [Son] hit [Yamura] in the lip.

5. [Yamura] responded with punches to [Son's] eye and face.

6. [Son] suffered severe visible bruising to the eye, with visible injury still at the time of trial.

7. [Yamura] is significantly larger than [Son].

. . . .

9. The force at issue was not employed with due regard for the age and size of the minor.

10. [Yamura's] use of force was not reasonably proportional and reasonably related to the purpose of safeguarding or promoting the welfare of the minor, specifically prevention or punishment of misconduct on [Son's] part.

11. [Yamura's] use of force was not necessary for self-defense or defense of others (the sister).



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CONCLUSIONS OF LAW

1. On January 30, 2001, . . . [Yamura] did physically abuse [Son], by causing physical injury.
2. [Yamura] acted intentionally, knowingly, or recklessly.  
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5. The offense of Abuse of Family [or] Household Member is proved beyond a reasonable doubt.
6. The defenses that a) [Yamura's] use of force was reasonably related (proportional) to the punishment of [Son's] conduct, and b) [Yamura's] use of force was justified in self- or defense of others, are disproved beyond a reasonable doubt.

(Citation omitted).

POINTS OF ERROR

Yamura asserts that "[t]he court below erred when it found [Yamura] guilty [of Abuse of Family or Household Member] because there was insufficient evidence to disprove beyond a reasonable doubt the defenses of parental discipline, defense of self, and defense of others." Yamura also asserts that he did not strike Son "with the state of mind to intentionally, knowingly, or recklessly cause injury to Son[.]" These points implicitly challenge findings of fact nos. 9, 10, and 11, and conclusions of law nos. 1, 2, 5, and 6.<sup>1</sup>

STANDARD OF REVIEW

The Hawai'i Supreme Court has repeatedly stated:

Evidence 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

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<sup>1</sup> When the point of error involves a finding or conclusion, Hawai'i Rules of Appellate Procedure Rule 28(b)(4)(C) (2003) requires an express challenge.

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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.

"'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."

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

(citations and block quotation format omitted).

RELEVANT STATUTES

HRS § 709-906(1) states, in relevant part, as follows:

"It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member[.]"

HRS § 702-206(2) (a) (1993) provides, in relevant part, that "[a] person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature."

HRS § 702-206(4) (a) (1993) provides that "[a] person acts negligently with respect to his conduct when he should be aware of a substantial and unjustifiable risk taken that the person's conduct is of the specified nature."

HRS § 703-300 (1993) provides, in relevant part, as follows: "'Believes' means reasonably believes."

Describing the defense of self, HRS § 703-304(1) (1993) provides, in relevant part, as follows:

Subject to the provisions of this section and of section 703-308 [governing use of force to prevent suicide or the commission of a crime], the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

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Describing the defense of others, HRS § 703-305(1) (1993) provides, in relevant part, as follows:

Subject to the provisions of this section and of section 703-310 [specifying the provisions generally applicable to justification], the use of force upon or toward the person of another is justifiable to protect a third person when:

- (a) Under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and
- (b) The actor believes that the actor's intervention is necessary for the protection of the other person.

Describing the defense of parental discipline, HRS § 703-309 (1993) provides, in relevant part, as follows:

The use of force upon or toward the person of another is justifiable under the following circumstances:

- (1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of the parent, guardian, or other responsible person, and:
  - (a) The force is employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor's misconduct; and
  - (b) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.

RELEVANT PRECEDENT

"[T]o 'physically abuse' someone means to maltreat in such a manner as to cause injury, hurt, or damage to that person's body." State v. Nomura, 79 Hawai'i 413, 416, 903 P.2d 718, 721 (App. 1995).

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DISCUSSION

1.

On appeal, Yamura contends that the State presented insufficient evidence to disprove beyond a reasonable doubt the defenses codified in HRS §§ 703-304, 703-305, and 703-309. We disagree.

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

[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.

Richie, 88 Hawai'i at 33, 960 P.2d at 1241 (citation omitted).

Son testified that he was twelve years old. Yamura admitted on cross-examination that he considered himself "bigger" than Son. The evidence permitted the court to decide that it was not reasonably necessary for Yamura to land his punches to protect Daughter and himself from Son. This is true even if Son's responsive force was "unlawful force[.]" In fact, Yamura did not testify that his punches were to protect himself or Daughter. To the contrary, Yamura admitted that his punches were in unintentional, unknowing, and non-reckless reaction to Son's responsive force. We conclude that the record provided substantial evidence to support the challenged findings of fact and conclusions of law of the family court.

2.

Yamura argues that the State presented insufficient evidence to prove beyond a reasonable doubt that he "intentionally, knowingly, or recklessly cause[d] injury to Son." Yamura contends that,

[w]hen his attempts to restrain Son failed and Son punched him in the mouth, [Yamura] punched Son "automatically," "instinctively," and "in reaction." There was no evidence that it was [Yamura's] conscious object to injure [Son], that he was practically certain that his conduct was of that nature, or that he consciously disregarded a substantial and unjustifiable risk that his conduct would cause such a result. . . . [Yamura] was, therefore, at most negligent in causing the injury [to Son].

We disagree.

In proving the state of mind of a particular defendant, the Hawai'i Supreme Court has 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. Mitsuda, 86 Hawai'i 37, 44, 947 P.2d 349, 356 (1997)

(quoting State v. Batson, 73 Haw. 236, 254, 831 P.2d 924, 934, *reconsideration denied*, 73 Haw. 625, 834 P.2d 1315 (1992)).

Is there substantial evidence that Yamura consciously disregarded a substantial and unjustifiable risk that he would maltreat Son in such a manner as to cause injury, hurt, or damage to Son's body? The answer is yes. Viewed most favorably to the State, there is evidence that, as noted above, it was not reasonably necessary for Yamura to do what he did to protect

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Daughter and himself from Son, and that when Yamura punched Son with a closed fist, three times, twice in the left eye and once in the right cheek, he did so intentionally, knowingly, or recklessly. The court did not believe Yamura's testimony that, when punching Son, he was reacting instinctively and was not "thinking" until after landing the punches. Consequently, Yamura's assertion that "[h]e was, . . . at most negligent in causing [Son's] injury" is without merit.

CONCLUSION

Accordingly, the May 23, 2001 Judgment of the family court is affirmed.

DATED: Honolulu, Hawai'i, March 7, 2003.

On the briefs:

Edwin Lauder Baker  
for Defendant-Appellant.

Chief Judge

Alexa D. M. Fujise,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
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Associate Judge

Associate Judge