

NOT FOR PUBLICATION

NO. 24625

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
BRANDON GAYAGAS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CASE NO. KAC01-211)

SUMMARY DISPOSITION ORDER

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

We summarily affirm the Judgment pronounced on July 20, 2001, by Judge Walton D. Y. Hong after a bench trial, and filed on October 17, 2003, finding Defendant-Appellant Brandon Gayagas (Gayagas) guilty of Assault in the Third Degree, Hawaii Revised Statutes § 707-712(1)(a) (1993), and sentencing Gayagas to jail for a six-month term consecutive to the term he was then serving, and to pay \$50 to the victim's compensation fund by June 5, 2002.

The sole point asserted by Gayagas is that the

evidence, which the trial court deemed to be credible, demonstrates that [Plaintiff-Appellee State of Hawaii (State)] proved the "conduct" element, but the State did not prove the "result" element of the offense. The trial court found that [Gayagas] grabbed Kristen [Low (Gayagas' girlfriend)] while she was standing by his truck, and as a result of [the grab by Gayagas], Kristen sustained bruises on her arms. . . . [T]here was sufficient evidence that [Gayagas] acted intentionally, knowingly or recklessly with respect to his conduct. . . . However, there was insufficient evidence to establish that [Gayagas], by grabbing Kristen, intended to cause bodily injury (i.e. the "result"), or knew that his conduct would cause bodily injury, or was reckless that his conduct would cause bodily injury.

(Footnote omitted.)

There is no merit to this point asserted by Gayagas.

It is well established 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.

"'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).

At the conclusion of the trial, the court orally found, in relevant part, as follows:

You're right; the relationship [between Gayagas and Kristen] went south. Because of a phone call that [Kristen's former boyfriend] made to [Gayagas] earlier that day, it started up the chain of events. [Gayagas] went home, found that [Kristen] had come into the house. Obviously some things were missing -- clothes[,] gifts, some clothes, her bag. And that may have infuriated him, kind of adding fuel to the fire.

Now, for whatever reason he says, "Okay, I'm" -- he goes and takes a nap. He hears some noise. He looks out and hears Lauren [(Kristen's female friend)]. He recognizes Lauren in her car, mauka side, and he sees [Kristen] standing by his truck. So he rushes out. And by the testimony the Court finds credible, he grabs [Kristen], brings her into the house.

The Judgment pronounced on July 20, 2001, and filed on October 17, 2003, is supported by the findings and the findings are supported by the evidence.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs

submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the decision and order from which the appeal is taken, filed on October 17, 2003, is affirmed.

DATED: Honolulu, Hawai'i, November 18, 2003.

On the briefs:

James S. Tabe,
Deputy Public Defender,
for Defendant-Appellant.

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai,
for Plaintiff-Appellee.