NOT FOR PUBLICATION

NO. 24921

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHARLES HENDRICKSON, SR., Defendant-Appellant

APPEAL FROM THE FAMILY DISTRICT COURT OF THE SECOND CIRCUIT
(FC-CR NO. 01-1-0751)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Lim, JJ.)

Charles Thomas Hendrickson, Sr. (Defendant) appeals the January 17, 2002 judgment of the family court of the second circuit, as amended on January 18, 2002, the Honorable Ruby A. Hamili, judge presiding, that convicted him of the offense of abuse of family and household member, a violation of Hawaii Revised Statutes (HRS) § 709-906 (1993 & Supp. 2002).[1] We affirm.

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[1] Hawaii Revised Statutes (HRS) § 709-906(1) (1993 & Supp. 2002) provides, in pertinent part, that "[i]t shall be unlawful for any person, singly or in concert, to physically abuse a family or household member[.]" See also HRS § 702-204 (1993) ("When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly."); State v. Eastman, 81 Hawai'i 131, 140, 913 P.2d 57, 66 (1996) (pursuant to HRS § 702-204, "the requisite state of mind for a violation of HRS § 709-906(1) is that of acting intentionally, knowingly, or recklessly"); State v. Tomas, 84 Hawai'i 253, 257, 933 P.2d 90, 94 (App. 1997) ("to 'physically abuse' someone under HRS § 709-906(1) means to maltreat in such a manner as to cause injury, hurt or damage to that person's body" (citations and some internal quotation marks omitted)).

I. Background.

At the January 17, 2002 bench trial, Defendant's son, Charles R. Hendrickson, Jr. (Charles), testified first for the State. On direct examination, Charles related that on August 16, 2001, at approximately 5:30 p.m., he was awoken from a nap by a loud argument between Defendant and Defendant's wife, Loretta Hendrickson (Loretta). "And I was kind of mad that I got woked (sic) up. So I ran outside, I pushed him down, and we was on the ground for a while. . . . We were on the ground wrestling." Charles described how his injuries were sustained: "I was just trying to hold him down. And when he got up he bumped the back of his head on my lip."

The deputy prosecuting attorney (DPA) asked Charles, "And do you recall telling the police officer that your father was fighting with your stepmother [Loretta]?" Charles answered, "Yeah, if that's what it says." The DPA then queried, "And did you also tell the police officer that your dad began to push your stepmother?" Charles demurred, "I -- no. Don't remember." The DPA continued, "Did you tell the police officer that you intervened to stop your father from pushing your stepmother and at that point your stepfather (sic) pushed you in the face with his right hand?" Charles responded, "I did say that but that's a false statement." When asked whether he told the police officer

that Defendant had been drinking before the incident, Charles equivocated, "If I did I was wrong." Charles confirmed that he filled out and signed a Victim's Voluntary Statement Form (VVSF) about thirty to forty-five minutes after the incident. Charles acknowledged that he wrote in his VVSF: "Trying to break up a fight between my mom and dad -- dad and the wife, and I got punched in the face."

When the DPA moved to admit the VVSF into evidence, defense counsel objected:

> [DEFENSE COUNSEL]: . . . the prosecutor led him through the [VVSF] and into the record he has already testified to what is on the form, and I don't have an objection to that being done but I do have an objection to it as being substantive evidence for this Court to consider[.]

Despite strenuous disagreement by the DPA, the Court admitted the VVSF into evidence only for impeachment purposes:

> THE COURT: With respect to this matter, [the VVSF] will be admitted, not as substantive but as an issue of credibility.
> [DPA]: But your Honor, under -- if I just may, under [Hawaii Rules of Evidence Rule] 802.1,[2] the foundation has been laid, and it is

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[2] Hawaii Rules of Evidence (HRE) Rule 802.1(1)(B) (1993) provides:

> The following statements previously made by witnesses who testify at the trial or hearing are not excluded by the hearsay rule:
> (1) Inconsistent statement. The declarant is subject to cross-examination concerning the subject matter of the declarant's statement, the statement is inconsistent with the declarant's testimony, the statement is offered in compliance with rule 613(b), and the statement was:
> . . . .
> (B) Reduced to writing and signed or otherwise adopted or approved by the declarant[.]

HRE Rule 613(b) (1993) provides that "[e]xtrinsic evidence of a prior inconsistent statement by a witness is not admissible unless, on direct or cross-examination, (1) the circumstances of the statement have been brought to

> a prior inconsistent statement which was reduced to writing, signed or adopted or approved by the declarant.
> . . . .
> THE COURT: The court has admitted it for impeachment purposes, credibility (inaudible).

(Footnote supplied.)

Police officer Mark Hada (Officer Hada) testified next for the State. On the evening in question, he was called to an "abuse in progress" at Defendant's residence. When he got there, he met Charles. When the DPA asked Officer Hada to relate what Charles then told him, defense counsel objected:

> [DEFENSE COUNSEL]: Your Honor, I'm going to object. There was no question that the prior witness testified consistently with everything that was asked of him regarding what he told the police, and, therefore, it's inappropriate and cumulative for [the DPA] to now go through it again.

The court agreed with defense counsel, so the balance of Officer Hada's testimony on direct was limited essentially as follows:

> Q: What did he -- what, if anything did [Charles] tell you was occurring between his father and stepmother?
> A: They had gotten into a -- basically a pushing match.
> Q. Okay. Did he say anything to you as to whether his father had consumed any alcoholic beverages?
> A. Yes.
> Q. What did he say?
> A. He had a few beers.

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the attention of the witness, and (2) the witness has been asked whether the witness made the statement. The Rule 802.1 Commentary makes it clear that prior inconsistent statements under HRE Rule 802.1 are admissible not only for impeachment purposes, but for substantive purposes as well. See also Eastman, 81 Hawai'i at 137, 913 P.2d at 63 ("[complaining witness's] prior inconsistent statements in the VVSF met all the requirements under HRE Rule 802.1(B) for admissibility as substantive evidence of Eastman's guilt"); Tomas, 84 Hawai'i at 265-66, 933 P.2d at 102-103 ("We conclude then that an uncorroborated prior inconsistent statement of a family or household member offered under HRE Rule 613 and HRE Rule 802.1 as substantive evidence of the facts stated therein may be sufficient, if believed, to establish physical abuse and the manner in which such abuse was inflicted in a prosecution for physical abuse of a family or household member under HRS § 709-906.").

. . . .
Q. Okay. And did you observe any injuries to him?
A. Yes.
Q. What did you observe?
. . . .
A. He had a swollen upper left lip.
Q. Okay.
A. And also a laceration inside his upper left lip.

After Officer Hada testified, the State rested. Defendant then tendered an unsuccessful motion for judgment of acquittal.

For his first witness, Defendant called Loretta to the stand. Loretta related that she and Defendant were arguing near Charles' bedroom when Charles came out of his room, pushed Defendant to the floor and held him down. Loretta maintained that at that point, she walked away to her room and missed the balance of the incident. Loretta denied that Defendant pushed her during their argument.

Defendant testified next. He, too, denied there was any physical contact during his argument with Loretta. He remembered that Charles came out of his bedroom during the argument and "pushed me down on the floor and then held me down." "Then I just -- all my strength I just pushed back up, and that's when I bumped him." Defendant explained that it was the back of his head that hit Charles in the mouth. He denied that he punched Charles in the mouth. After the incident, Defendant left the house and went for a walk.

To start off her closing argument, the DPA announced that, "Defendant did recklessly cause injury to a household or family member, that being his son, Charles Hendrickson, Jr." The DPA also stated:

> By one account he's punched in the mouth, by another he's struck in the mouth with his father's head, and by Defendant's testimony he's struggling with all his might or all his strength and recklessly hits the complaining witness in the mouth causing visible injury, as testified to by the complaining witness and the police officer.

Concluding, the DPA declared that "when you look at the totality of all of the evidence, it's clear that, again, the State has proven its case." Picking up on the DPA's reference to recklessness, defense counsel asserted in her closing argument:

> Then there's the story that the government then takes from the testimony presented by the Defense, which is that there was a reckless causing of an injury. And that would be -- they would like to have you believe it would be consistent with the father being on the ground, pushing himself up with all his might and hitting his son in the back of the head.
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> Your Honor, you cannot convict him on that behavior because in order to buy into that argument the Court has to admit that what happened is, is that the son in fact came in, intervened in a situation that he had no legal justification to do so, shoved his father to the ground. His father had every right (inaudible) his son to get up -- try to get himself up off the floor. He's not the one who placed himself on the floor, it was the son.
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> So the government wants to argue a reckless conduct. The son placed himself in that situation, and the law say that that's not reckless. The father was under no legal obligation to lay on the floor and allow his son to get on top of him and shove him down. He indicated he's much larger than him. He's the one who intervened. And the law absolutely says that my client has the right to defend himself.
>
> And we would submit that, if anything[,] he, in the process of getting up -- it's not even a self-defense, your Honor. He simply tried to get up off the ground, he was justified in doing so, there was no reason for him to be down there at all. And if that's the way that the injury occurred, which seems to be the testimony of both my client as well as the complaining witness, then that is not reckless conduct.

The Court found Defendant guilty, then clarified its ruling at the request of defense counsel:

> THE COURT: With respect to this complaint that was filed August 24th, the year 2001, for an incident that occurred on August 16th, the year 2001, this Court, having heard the testimony of the witnesses who were present on the date in question, August 16th, that being family members of the Hendrickson household and the additional officer's testimony who was not present at the time of the incident, this is clearly a case of credibility of all witnesses and this Court needs to determine what evidence has been given and give it the appropriate weight (inaudible).
>
> This Court has State's Exhibit Number 1, the photograph of an injury. Certainly an injury occurred on that date, August 16th, year 2001. The State (sic) has also received into evidence the statement that was given as well as the testimony of the victim's statement today. What this court does find that there was a previous struggle occurring between a husband and wife and a witness behind closed doors who happens on this argument in progress. What we're concerned with is the behavior thereafter.
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> This Court does find that Charles Hendrickson did recklessly cause physical abuse of a family member, that being Charles Hendrickson, Jr., on August 16th of the year 2001.
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> . . . .
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> [DEFENSE COUNSEL]: Your Honor, I'm sorry, I need a clarification. Did the Court say that the Court found that my client recklessly caused injury to the son?
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> THE COURT: That's correct.
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> [DEFENSE COUNSEL]: And is the Court basing that ruling on the --
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> THE COURT: Weight of the evidence.
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> [DEFENSE COUNSEL]: I'm sorry, I can't hear.
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> THE COURT: The weight of the evidence.
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> [DEFENSE COUNSEL]: The weight of the evidence?
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> THE COURT: (No audible response.)
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> [DPA]: (Inaudible) sentencing?
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> THE COURT: Yes.

II. Discussion.

Essentially, all of Defendant's arguments on appeal seek to exploit the court's finding that Defendant "did recklessly cause physical abuse of a family member, that being [Charles.]" By finding that Defendant only recklessly (rather than intentionally or knowingly) caused physical abuse of Charles, the court, Defendant contends, *ipso facto* must have

adopted the factual scenario urged by Defendant -- that he struck his son's mouth with the back of his head while trying to break his son's hold on his back and get up off the ground, hence accidentally or in self-defense[3] and not culpably -- rather than the one championed by the State -- that he flat-out punched his son in the mouth in anger, hence intentionally and criminally. Thus, Defendant argues, the facts found by the court definitively showed that he acted without *mens rea*, or that he acted in self-defense, and were in either event insufficient to support a conviction.[4] We disagree.

The court's finding of a reckless *mens rea* did not *ipso facto* preclude a finding that Defendant punched Charles in the mouth. Given that *mens rea* must be established as to each

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[3] HRS § 703-304(1) (1993) provides, in pertinent part, that "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." HRS § 703-300 (1993) defines "force" as "any bodily impact, restraint, confinement, or the threat thereof." (Emphasis supplied.)

[4] The test on appeal for a claim of insufficient evidence is "whether, viewing the evidence in the light most favorable to the State, there is substantial evidence to support the conclusion of the trier of fact." State v. Ildefonso, 72 Haw. 573, 576, 827 P.2d 648, 651 (1992) (citations omitted). "Substantial evidence is credible evidence which is of sufficient quality and probative value to enable a man of reasonable caution to reach a conclusion." Ildefonso, 72 Haw. at 577, 827 P.2d at 651 (citation, internal quotations marks and ellipsis omitted). "An appellate court will not pass upon the trial judge's decisions with respect to the credibility of witnesses and the weight of the evidence, because this is the province of the trial judge." Eastman, 81 Hawai'i at 139, 913 P.2d at 65 (citations omitted). "It matters not if a conviction under the evidence as so considered might be deemed to be against the weight of the evidence so long as there is substantial evidence tending to support the requisite findings for the conviction." Ildefonso, 72 Haw. at 576-77, 827 P.2d at 651 (citation and internal quotation marks omitted).

material element of the offense, HRS § 702-204 (1993)("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"), the court could have found -- and the court's phraseology indicates that it did find -- that while Defendant might have intentionally punched his son in the mouth (conduct element), he thereby only "recklessly caus[ed] physical abuse" (result element),[5] thus invalidating Defendant's purely axiomatic reasoning in this respect. Cf. State v. Eastman, 81 Hawai'i 131, 141, 913 P.2d 57, 67 (1996) ("the family court's finding that Eastman slapped his wife on the side of her head, . . . show[s] that Eastman committed this physical abuse with, at the very least, a reckless state of mind").

The evidence adduced at trial -- taken in the light most favorable to the State, State v. Ildefonso, 72 Haw. 573, 576, 827 P.2d 648, 651 (1992), and in light of the prerogative of the trial judge in the sphere of witness credibility and weight of the evidence, Eastman, 81 Hawai'i at 139, 913 P.2d at 65 --

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[5] HRS § 702-205 (1993) provides:

> The elements of an offense are such (1) conduct, (2) attendant circumstances, and (3) results of conduct as:
> (a) Are specified by the definition of the offense, and
> (b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

showed that Charles' trial testimony about his recanted oral and written descriptions of the incident in fact accurately recounted the events: "Trying to break up a fight between my mom and dad -- dad and the wife, and I got punched in the face." This was substantial evidence to support Defendant's conviction. Ildefonso, 72 Haw. at 577, 827 P.2d at 651. On this basis, Defendant's arguments on appeal regarding insufficient evidence to establish *mens rea*, or to disprove self-defense, are devoid of merit.

III. Conclusion.

The January 17, 2002 judgment of the court, as amended on January 18, 2002, is affirmed.

DATED: Honolulu, Hawaii, August 21, 2003.

On the briefs:

Mimi DesJardins
for defendant-appellant.

Chief Judge

Arleen Y. Watanabe,
Deputy Prosecuting Attorney,
Jennifer M.P. Eng,
Law Clerk on the brief,
County of Maui, for
plaintiff-appellee.

Associate Judge

Associate Judge