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NO. 25143

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
WILLIAM MYERS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. CT1:05/01/02)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant William Myers (Myers) appeals from the judgments (Judgments) pronounced in the District Court of the Second Circuit on May 1, 2002 by Judge Douglas H. Ige and filed on November 21, 2003. The Judgments convicted Myers of two counts, Assault in the Third Degree, Hawaii Revised Statutes (HRS) § 707-712(1) (a) (1993), and Harassment, HRS § 711-1106(1) (a) (Supp. 2002), and sentenced him to ten days in jail, a fine of \$500, and to pay \$50 to the Criminal Injuries Compensation Fund. On May 30, 2002, the court granted Myers' Motion for Stay Execution of Sentence Pending Appeal.

At trial, the alleged victim, Richard Higashi (Higashi), testified that, on December 22, 2000, in the parking lot of Lihikai Elementary School (identified place), at around 5:20 p.m. (Identified time), Myers spat on Higashi's face, hit Higashi on the jaw with his fist, and told Higashi "you're an F'n dead man walking". A stranger, Maggie Ballesteros (Ballesteros),

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testified that she heard the statement at the identified place and in the vicinity of the identified time.

In his defense, Myers testified that at the identified date and the identified time he was with his adult son (Junior) at the residence of Myers' long-time friend, Eugene Kahoohanohano (Kahoohanohano). To the question, "Did you hit Richard Higashi that day?", he responded, "I did not." To the question, "What happened in May of 2000[?]", he responded, "[Higashi] began having an affair with my wife."

Kahoohanohano, Kahoohanohano's adult daughter (Julie), and Junior each testified that on the identified date and at the identified time, they were with Myers at Kahoohanohano's residence.

The court found, in relevant part, as follows:

THE COURT: All right. There's no doubt in the Court's mind that the incident did happen. And that's based on Ms. Ballesteros' testimony. There 's no doubt that the incident happened. In my mind. With Mr. Higashi's testimony alone, maybe doubt. But with Ms. Ballesteros' testimony, the incident happened. You know, she supports Mr. Higashi's testimony as to the incident. So there's no doubt in my mind that the incident did happen.

Now, I have to look at -- so it only becomes -- whenever there's an alibi defense, whether or not there's a question of identity. And looking at that, there's no question that Mr. Higashi knew Mr. Myers for a long time. Twenty years. There can be no question of Mr. Higashi's identity of the perpetrator of this act upon him.

So then the question is: What motive does Mr. Higashi have to say that Mr. Myers did it when somebody else did it? Because the incident did happen. I don't have any doubt in my mind the incident happened. Okay. I don't see any motive.

Now, if I look at the witnesses test -- you know, defense witnesses, you know, I don't think they're lying. I think there's

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some memory recollection, it happened a long time ago. I think they visited Mr. Kahoochanohano. But I don't think it happened on this day. I don't think -- I'm not convinced it was on this day.

The time sequence is off on the witnesses. You know, some are saying I say this or I -- you know, I don't think they really have a recollection on the day that -- which day it happened. When it -- when Mr. Myers came over, if that happened, Mr. Myers -- Mr. Kahoochanohano had not gone to the doctor yet.

As a side note, if the doctor saw him at 2:00 and he was -- left at 2:20, that would be the first time I saw a person seeing a doctor on the time he was supposed to see the doctor. But everything else just doesn't match. If it did happen on that day I think it -- Mr. Myers probably came at a later time to visit Mr. Kahoochanohano and -- but I believe -- I don't see any motive or reason why Mr. Higashi would be saying it was Mr. Myers who did this to him when it was someone else. Because as I said, I don't have any doubt that the incident happened as supported by Mrs. Ballesteros.

So based on that finding I'll find the Defendant guilty of the offense of assault, hitting Mr. Higashi in the -- with his left hand on the right side of his face, causing injury, hurt to Mr. Higashi, and in Count 2 of harassment by spitting at Mr. Higashi.

In his first point, Myers argues that his "constitutional rights to due process and to have the burden of proof on the State was [sic] violated" because

[i]n the trial court's oral findings, namely, "I don't think -- I'm not convinced it was on this day", the trial court in effect shifted the burden to the defense for a non-affirmative defense and expected the defendant to 'convince' the court that the defendant was in another place or in another situation that would prevent the defendant or make impossible for the defendant to commit the crimes with which he is charged.

Viewing the challenged words in context, we disagree.

In support of our decision, we note the court's subsequent statement:

All right. The -- I don't take any joy in finding you guilty but I -- I (unintelligible) I think under the evidence that was -- I was compelled to do that based on my findings. . . [H]aving found you guilty and being convinced beyond a reasonable doubt that you did what was alleged by the State, . . . I will impose jail time of 10 days and a \$500.00 fine, plus \$50 Criminal Injuries Compensation Fund assessment[.]

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In his second point, Myers argues that "[t]here was insufficient evidence to support a conviction for the offenses of Assault in the Third Degree and Harassment because the State failed to prove beyond a reasonable doubt that [Myers] was the person responsible for the aforementioned offenses." We disagree.

We are required to sustain the conviction "'so long as there is substantial evidence tending to support the requisite finding for conviction.'" State v. Gabrillo, 10 Haw. App. 448, 458, 877 P.2d 891,895 (1994) (quoting State v. Matias, 74 Haw. 197, 207, 840 P.2d 374, 379 (1992)) (other citations omitted). Thus, "'it matters not if a conviction . . . might be deemed to be against the weight of the evidence.'" Id. Indeed, "on appeal . . . [we do not determine] whether guilt is established beyond a reasonable doubt[.]" Gabrillo, 10 Haw. App. at 458 (quoting State v. Cummings, 49 Haw. 522, 533, 423 P.2d 438, 445 (1967)). The test on appeal is "whether there was substantial evidence to support the conclusion of the trier of fact." Id. "This standard of review is the same whether the case was tried before a judge or jury." Gabrillo, 10 Haw. App. at 458-59 (quoting State v. Hernandez, 61 Haw. 475, 478, 605 P.2d 75, 77 (1980)). Necessarily then, our search of the record is for the existence of evidence deemed "substantial", that is, "evidence which a reasonable mind might accept as adequate to support [the]

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[conclusion] of the fact finder." Gabrillo, 10 Haw. App. at 459 (quoting State v. Lima, 64 Haw. 470, 475, 643 P.2d 536, 539 (1982) (other citations omitted)). If there is substantial evidence supporting the fact finder's decision, affirmance is required; conversely, the absence of such substantial evidence requires reversal of the conviction. Gabrillo, 10 Haw. App. at 459. In this case, the findings of guilt are supported by substantial evidence on the record.¹

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 May 1, 2002 judgment is affirmed.

DATED: Honolulu, Hawai'i, January 28, 2004.

On the briefs:

Lee S. Hayakawa
for Defendant-Appellant. Chief Judge

Simone C. Polak,
Deputy Prosecuting Attorney, Associate Judge
County of Maui,
for Plaintiff-Appellee. Associate Judge

¹ The testimony of a single witness, if found by the trier of fact to have been credible, will suffice. In re Doe, 95 Hawai'i 183, 196-97, 20 P.3d 616, 629-30 (2001). See also, State v. Eastman, 81 Hawai'i 131, 141, 913 P.2d 57, 67 (1996); State v. Ibuos, 75 Haw. 118, 123, 857 P.2d 576, 578-79 (1993).