

NO. 25282

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DONALD SHAWN BAKER, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
SOUTH KOHALA DIVISION
(POLICE REPORT NO. G-90483/SK)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Donald Shawn Baker (Baker) appeals from the October 13, 2003 Judgment of District Court of the Third Circuit, South Kohala Division¹ (district court). Baker was charged and convicted of Assault in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 707-712(1)(a) (1993).²

On appeal, Baker contends the district court erred (1) by making findings that the jurisdictional and territorial requirements conferring jurisdiction to the district court had

¹ The Honorable Sandra Schutte presided.

² Hawaii Revised Statutes § 707-712 (1993) provides in relevant part:

§707-712 Assault in the third degree. (1) A person commits the offense of assault in the third degree if the person:

(a) Intentionally, knowingly, or recklessly causes bodily injury to another person[.]

· · ·
(2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

been met; (2) by making findings and conclusions that the victim's alcohol abuse was not a contributing factor in the case; and (3) by failing to make findings and conclusions relating to the issue of Baker's claim of self-defense and by failing to find that Baker was justified in using force in self protection. We disagree with Baker's contentions.

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 Baker's points of error as follows:

(1) The record contains substantial evidence (credible evidence of sufficient quality and probative value) to support the district court's finding of jurisdiction and venue, and we are not left with a definite and firm conviction that a mistake has been made. State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995); State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992).

(2) The record contains substantial evidence that supports the district court's finding that alcohol was not a substantial factor in this case, and we are not left with a definite and firm conviction that a mistake has been made. Okumura, 78 Hawai'i at 392, 894 P.2d at 89; Batson, 73 Haw. at 248-49, 831 P.2d at 931.

(3) The record contains credible evidence of sufficient quality and probative value that Baker was not acting in self-defense. State v. Culkin, 97 Hawai'i 206, 215, 35 P.3d 233, 242 (2001) (self-defense is not an affirmative defense; therefore, the State carries the burden of disproving it once evidence supporting it has been adduced.)

Accordingly, we affirm the October 13, 2003 Judgment of the District Court of the Third Circuit, South Kohala Division.

DATED: Honolulu, Hawai'i, April 29, 2004.

On the briefs:

David H. Lawton
for defendant-appellant.

Chief Judge

Dale Y. Ross,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.

Associate Judge

Associate Judge