

NOT FOR PUBLICATION

NO. 26304

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ANDREW H. STARK, Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(REPORT NO. H-43908/KU)

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Nakamura, and Fujise, JJ.)

Defendant-Appellant Andrew H. Stark (Stark) appeals from the Judgment filed on December 5, 2003, in the District Court of the Third Circuit, North and South Kona Division (district court).^{1/} After a bench trial, Stark was found guilty of telephone harassment in violation of Hawaii Revised Statutes (HRS) § 711-1106(1)(c) (Supp. 2004).^{2/} Stark was sentenced to a six-month term of probation, subject to the conditions that he pay a \$75 probation fee and a \$25 criminal injury compensation fee, perform 25 hours of community service, and refrain from contacting or harassing the complaining witness (the CW).

^{1/} The Honorable Joseph P. Florendo, Jr. presided.

^{2/} Hawaii Revised Statutes (HRS) § 711-1106(1)(c) (Supp. 2004) provides as follows:

§711-1106 Harassment. (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

- (c) Repeatedly makes telephone calls, facsimile, or electronic mail transmissions without purpose of legitimate communication[.]

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On appeal, Stark argues that 1) there was insufficient evidence of Stark's intent to harass, annoy, or alarm the CW; and 2) the district court erred in finding that Stark acted with the requisite intent to commit telephone harassment. After a careful review of the record and the briefs submitted by the parties, we conclude that Stark's arguments are devoid of merit.

There was sufficient evidence to prove that Stark's repeated telephone calls to the CW were done without purpose of legitimate communication and with the intent to harass, annoy, or alarm the CW. The evidence showed that during a span of three weeks, Stark called the CW between 75 and 100 times, sometimes calling 15 to 25 times in a row and leaving messages on the CW's voicemail. Contrary to Stark's contention, his intent to harass, annoy or alarm could reasonably be inferred from the sheer volume of his telephone calls. In addition, there was evidence that Stark left voicemail messages that were nasty and bothersome; that Stark's purpose in making repeated calls was to cost the CW money because Stark knew the CW was being charged for each call; and that Stark admitted to a police officer that he placed the calls to make the CW angry. Stark's conviction was supported by substantial evidence. State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996).

We likewise reject Stark's argument that the district court erred in finding that Stark acted with the intent to

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harass, annoy or alarm the CW. Stark's claim that the evidence only showed that he acted with a knowing, but not an intentional, state of mind is unconvincing. There was substantial evidence that Stark's conscious object in repeatedly calling the CW was to harass, annoy, or alarm the CW. The district court did not err in finding that Stark acted with the requisite criminal intent. State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995).

IT IS HEREBY ORDERED that the Judgment filed on December 5, 2003, in the District Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 26, 2005.

On the briefs:

Melissa W.H. Chee,
Deputy Public Defender,
for Defendant-Appellant.



Acting Chief Judge

Jefferson R. Malate,
Deputy Prosecuting Attorney,
County of Hawaii,
for Plaintiff-Appellee.



Associate Judge



Associate Judge