NO. 26465

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JASON J. REYES, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD CR. NO. 03498075)

MEMORANDUM OPINION
(By: Burns, C.J., Foley and Nakamura, JJ.)

Defendant-Appellant Jason J. Reyes (Reyes or Defendant) appeals from the "Findings of Fact, Conclusions of Law, Judgment and Sentence" filed on February 23, 2004, in the District Court of the First Circuit, Honolulu Division (district court).[1] The State of Hawai'i (the State) charged Reyes with Assault in the Third Degree. After a bench trial, the district court found Reyes guilty of Mutual Affray in violation of Hawaii Revised Statutes (HRS) § 707-712(2) (1993).[2] Reyes was sentenced to six

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[1] The Honorable Leslie A. Hayashi presided.

[2] Hawaii Revised Statutes (HRS) §§ 707-712 (1993) provides as follows:

§ 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; or

(b) Negligently causes bodily injury to another person with a dangerous instrument.

(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.

months' probation and payment of a $100 fine, a $75 probation fee, and $25 criminal injury compensation fund assessment.

On appeal, Reyes claims that the district court erred in: 1) finding that Reyes' use of force exceeded what was reasonable under the circumstances; and 2) adjudging him guilty of Mutual Affray because there was insufficient evidence to negate Reyes' self-protection defense beyond a reasonable doubt.

BACKGROUND

The facts found by the district court established the following. In the early morning of December 13, 2003, Reyes was talking to his friends, who were among a crowd of people in front of a 7-ElEVEN store near the Zanzabar Night Club in Waikiki. The complaining witness (CW) and several of her friends, including a large female described as between 6'2" and 6'3" and weighing between 250 and 260 pounds, were making their way through the crowd. The large female thought one of Reyes' friends, James Bowlbey (Bowlbey), called the large female and her group "fat bitches." The large female yelled at Bowlbey and then punched him in the face. Reyes intervened and explained to the large female that Bowlbey had not done anything and that she should leave. The large female started yelling at Reyes. She punched Reyes twice in the mouth and once in the chest. Reyes did not respond, testifying that he had the presence of mind to restrain himself. At that point, the CW threw a glancing blow at Reyes.

Reyes responded with jab to the CW's face which bloodied her nose and required her to get three stitches.

The CW, who was the prosecution's sole witness, testified to a drastically different version of the incident. The CW testified that Reyes twice said "fat bitch" and that, without any provocation, Reyes punched the CW after she gave him a "dumb look." She further denied seeing any confrontation between any of her friends and Reyes' friends. The district court rejected the CW's version of the incident, stating that it did not find the CW "to be totally credible as compared to defense witnesses."

Reyes testified that before he punched the CW, the large female and others in her group threatened to call people who would "take care of" and "kill" Reyes. Reyes' friend, Todd Honaker, also testified that prior to Reyes' punch, the large female threatened to have her brothers come and beat up Reyes and Bowlbey. Another of Reyes' friends, Christopher Miller (Miller), however, testified that the large female only started threatening to have Reyes beat up and killed after Reyes punched the CW. The district court accepted Miller's testimony and found that the threats were made after Reyes had punched the CW.

DISCUSSION

On appeal, Reyes challenges the following findings of fact and conclusion of law of the district court:

FINDINGS OF FACT

. . . .

8..[sic] Defendant's use of force exceeds what is reasonable under the circumstances.

9. What began as a verbal altercation became a physical altercation between [the CW] and Defendant. This physical altercation was entered into by mutual consent.

CONCLUSIONS OF LAW

. . . .

6. Under the facts adduced at trial, the court concludes that punching the complaining witness in the face after receiving a glancing blow is not reasonable. Defendant would have been justified in defending himself by holding his hands up to protect himself, holding the complaining witness at bay or even shoving the complaining witness away. A punch to the face is not reasonable protective force under these circumstances. Further, Defendant contends that he was scared, that threats were being made on his life, and therefore it was the only way he could think of getting out of the situation. But if threats were being made, it doesn't make sense that Defendant would punch someone who has made the threats which would in all likelihood increase the risk of making the threats come true. Instead, it is more likely in this case that the threats occurred following the punches as is consistent with the testimony of Christopher Miller. Defendant's actions do not amount to self-defense based on the Defendant's own testimony as well as that of his two witnesses.

HRS § 703-304 (1993) provides in relevant 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." Under HRS § 703-304, a defendant's use of force against another person is justified when two conditions are met. First, the defendant must subjectively believe that his use of force is immediately necessary to protect himself against the use of unlawful force by the other person. State v. Lubong, 77 Hawai'i 429, 433, 886 P.2d

766, 770 (App. 1994). Second, the defendant's subjective belief must be objectively reasonable. Id. Once the defendant presents some credible evidence that his use of force was justified, the prosecution has the burden of disproving that evidence or proving facts negativing the defense beyond a reasonable doubt. Id. at 431, 886 P.2d at 768. The prosecution can meet its burden either by showing that the defendant did not have the required subjective belief or that the defendant's actions were not objectively reasonable. Id. at 433, 886 P.2d at 770.

I.

The evidence on whether Reyes subjectively believed that punching the CW was immediately necessary to protect himself was conflicting. Reyes characterized his jab to the CW's face as a split-second reaction to the CW's punch. This indicates that Reyes' punch could have been thrown solely out of anger or without Reyes subjectively believing that it was necessary for self-protection. In addition, there was evidence that Reyes had been in the Army for seven years, had received training in hand-to-hand combat, and was with several military friends when he punched the CW.

On the other hand, Reyes testified that prior to throwing the punch, he was scared because the large female and others in her group had threatened to call people that would kill him. Reyes had already absorbed three punches from the large female and a glancing blow from the CW before responding with a

jab to the CW's face. Reyes testified that he punched the CW because that was "the only way" he could stop the women's attack and get himself "out of there."

Although the district court found much of Reyes' testimony to be credible, it did not accept all of Reyes' testimony. In particular, the district court stated that the alleged threats against Reyes' life were more likely made after Reyes punched the CW. Significantly, the district court did not make any specific findings on whether Reyes subjectively believed that his use of force was immediately necessary for self-protection. We cannot tell how the district court would have decided this issue. There was substantial evidence to support a finding either way and the district court's findings of fact and conclusions of law do not provide any clear guidance. The decision on what Reyes subjectively believed turns largely on the assessment of Reyes' credibility, a matter within the province of the trial court. State v. Eastman, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996). The State could have satisfied its burden of disproving Reyes' subjective-belief evidence if the district court did not believe Reyes' subject-belief testimony. State v. Tanielu, 82 Hawai'i 373, 378-79, 922 P.2d 986, 990-91 (App. 1996).

The absence of any specific findings on Reyes' subjective belief would be immaterial if the district court properly rejected Reyes' self-protection defense on the ground

that his use of force was objectively unreasonable. See Lubong, 77 Hawai'i at 433-34, 886 P.2d at 770-71. We therefore turn to that question.

II.

The district court found that Reyes' use of force exceeded what was objectively reasonable under the circumstances. However, the court's findings regarding the events leading up to Reyes' punch established that Reyes was acting as a peacemaker when he intervened in the confrontation between the large female and Bowlbey. Reyes was not the person who uttered the words "fat bitch." Nevertheless, the large female punched Reyes twice in the mouth, then punched him again in the chest. The CW joined in the attack and threw a punch at Reyes that glanced off the side of his head.[3] In response, Reyes threw a single jab to the CW's face, which bloodied the CW's nose and ended the confrontation.

We conclude that the district court clearly erred in finding that the force employed by Reyes was objectively unreasonable. See State v. Crouser, 81 Hawai'i 5, 10, 911 P.2d 725, 730 (1996) (holding that the reasonableness of the use of force under the parental discipline defense is reviewed for clear error). The district court's finding was not supported by substantial evidence given the version of the incident it adopted. The alternatives suggested by the district court of

[3] The undisputed evidence showed that Reyes was 24 years old, 5'6", and 160 to 165 pounds. The complaining witness (the CW) was 20 years old, and was described as "overweight" but not muscular.

Reyes' holding up his hands or holding the CW at bay were not reasonable. See State v. Straub, 9 Haw. App. 435, 445-46, 843 P.2d 1389, 1394 (1993). HRS § 703-304 permits a person to use force in self-protection. The district court's belief that it would have been reasonable for Reyes to shove the CW away does not render unreasonable the use of force chosen by Reyes in response to the sustained attack by the large female and the CW.

III.

The district court should not have rejected Reyes' self-protection defense on the ground that Reyes' use of force was objectively unreasonable. Thus, the dispositive issue in this case is whether Reyes acted with the requisite subjective belief for the self-protection defense. For reasons previously stated, the answer to this issue must be supplied by the district court.

Accordingly, we vacate the judgment of conviction and remand the case with directions that the district court enter specific findings of fact on whether Reyes subjectively believed that his use of force was immediately necessary to protect himself against the use of force by the CW. See State v. Wells, 7 Haw. App. 510, 514-15, 780 P.2d 585, 588 (1989). We further direct the district court to revise its findings of fact and conclusions of law in conformity with this Memorandum Opinion and

to enter a new judgment that is consistent with its findings on the subjective-belief issue and with this Memorandum Opinion. Id.

CONCLUSION

The judgment of conviction is vacated and the case is remanded for further proceedings consistent with this Memorandum Opinion.

DATED: Honolulu, Hawai'i, August 12, 2005.

On the briefs:

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James L. Burns
Chief Judge

Daniel R. Foley
Associate Judge

Craig H. Nakamura
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