

NOT FOR PUBLICATION

NO. 26150

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
BLUE LILES, Defendant-Appellant

HONORABLE
JUDICIAL
COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-CR NO. 03-1-0401(2))

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., and Watanabe, J.,
with Foley, J., concurring separately)

Defendant-Appellant Blue Liles (Liles) appeals from the August 21, 2003 Judgment of Probation entered in the Family Court of the Second Circuit^{1/} convicting Liles of violating a temporary restraining order.

Liles and Penny Greenawalt (Greenawalt) had a nonmarital romantic relationship for "about five and a half years or so, on and off" and had one child. On May 23, 2003, Plaintiff-Appellee State of Hawai'i (the State) filed a complaint which alleged that "on or about the 6th day of May, 2003," Liles "did intentionally or knowingly violate" a "Temporary Restraining Order for Protection in FC-DA NO. 03-1-0267" "thereby committing the offense of Violation of a Temporary Restraining Order for Protection in violation of Section 586-4 of the Hawaii Revised Statutes." The complaint was referring to the temporary restraining order entered at Greenawalt's request on April 25, 2003 that ordered Liles "not [to] contact" Greenawalt.

^{1/} The Honorable Reinette W. Cooper presided.

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At the August 21, 2003 bench trial, the State presented evidence that on May 6, 2003, after Liles and his attorney and Greenawalt and her attorney had completed a court proceeding in which they were all involved, they were leaving the participants' area of the courtroom through a little swinging gate. Liles' attorney was followed by Liles, who was followed by Greenawalt, who was followed by Greenawalt's attorney. All were really close together. No explanation was given why Greenawalt was so close to Liles. What then happened was described by Greenawalt as follows:

Q. . . . What happened during that day during that session?

A. That day, [Liles] had filed three restraining orders. One for him, one for my baby and his daughter. And the Judge ordered a continuance of that case.

Q. And what about your case?

A. That case was continued too based on him filing the three restraining orders back against me. So my case got continued along with the other three.

Q. So it got continued to a later date?

A. Correct.

Q. Okay. And as you were exiting the courtroom, what happened?

A. [Liles] had turned around to me and directly into my face --

. . . .

THE WITNESS: . . . He had turned and went over his shoulder, he went ha, ha, ha. Because he had my baby, my child taken away to CPS. They took him away into foster care for two weeks by him filing those restraining orders. So he turned around and directly at me -- you know, did that, like ha, ha, I got you now.

. . . .

Q. Now, going back to the incident, you said that [Liles] -- your demonstration was he just looked over his shoulder and waived [sic] with his hands?

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A. Yeah, he had his eyes. And he was ha, ha, ha. It was clearly direct. His eyes were large. You know, it was straight at me.

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Q. He didn't say anything to you? He didn't say a word to you; correct?

A. No.

Q. He didn't touch you, did he?

A. No.

Greenawalt did not describe how Liles waved with his hands. Greenawalt characterized the actions of Liles as "just another one of his ways to try to get at me. It's another harassment."

Nicole Forelli, supervising attorney for the Maui office of the Domestic Violence Clearinghouse, testified in part as follows:

And then we were walking out of the courtroom. I was right behind [Greenawalt]. . . . [T]here's a swinging door, a swinging little gate thing. In 3-A, it's closer to the door, so we were all really close together. [Liles] was in front of us and then [Greenawalt] and I was right behind her probably just a few feet away from him. And he turned around and looked over his shoulder, looked right at [Greenawalt] and kind of winked, smirked at her, kind of like a I-got-you look, and just waived -- just direct contact. I was right behind her.

Based on that evidence, the court decided that "Contact is contact. And if you can't even adhere to the restraining order in a courtroom, well, I don't hold much hope outside of the courtroom." The court found Liles guilty of Violation of a Temporary Restraining Order for Protection, Hawaii Revised Statutes § 586-4 (Supp. 2005), and ordered Liles to be (1) incarcerated for 48 hours, (2) placed on probation for a period of one year, (3) to pay a \$50 Criminal Injuries Compensation fee, and (4) to pay a \$75 probation services fee.

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Liles filed a notice of appeal on October 10, 2003. This appeal was assigned to this court on April 10, 2006.

When person A has been ordered by a court not to contact person B and person A and person B are within a courtroom and leaving it immediately after participating in a court hearing involving both of them, does person A violate the court order by looking at person B in a manner that person B describes as offensive? We conclude that the answer is no.

Liles had a right to be where he was and, absent a court order specifically ordering otherwise, to look at Greenawalt. Such "contact" not being prohibited, the fact that it was done in a manner offensive to Greenawalt did not cause it to be prohibited.

Therefore, 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,

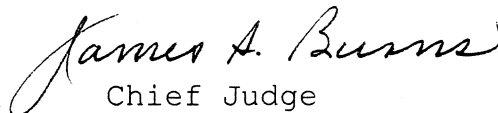
IT IS HEREBY ORDERED that the August 21, 2003 Judgment of Probation is reversed.

DATED: Honolulu, Hawai'i, June 30, 2006.

On the briefs:

Josette Anne Wallace
for Defendant-Appellant.

Artemio C. Baxa,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Chief Judge


Associate Judge