

NO. 26477

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

STATE OF HAWAI'I, Plaintiff-Appellant,  
v.  
YOJI WACHI, Defendant-Appellee

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STATE OF HAWAI'I

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-CR. NO. 03-1-1833)

SUMMARY DISPOSITION ORDER

(By: Burns, Chief Judge, Lim, and Nakamura, JJ.)

Defendant-Appellant Yoji Wachi (Wachi) appeals from the Judgment filed on March 22, 2004, in the Family Court of the First Circuit (family court).<sup>1</sup> A jury found Wachi guilty as charged of abuse of a family or household member, in violation of Hawaii Revised Statutes (HRS) Section 709-906 (Supp. 2005)<sup>2</sup> (Count 1), and second degree terroristic threatening (Terroristic Threatening II), in violation of HRS Sections 707-715 and 707-

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<sup>1</sup> The Honorable Rhonda Nishimura presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 709-906 (Supp. 2005) provides, in relevant part:

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member . . . .

For the purposes of this section, "family or household member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

717(1) (1993)<sup>3</sup> (Count 2). The family court sentenced Wachi to concurrent probationary terms of two years on Count 1 and one year on Count 2, with a special condition of two days' imprisonment.

Wachi agreed to the jury instructions given by the family court on the material elements and mental states required for the offenses of Terroristic Threatening II and abuse of a family or household member. Nevertheless, on appeal, Wachi claims that the family court erred by giving those instructions. Wachi argues that the family court committed plain error by: 1) failing to require proof of a "general mens rea" in instructing

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<sup>3</sup> HRS § 707-715 (1993) provides, in relevant part:

A person commits the offense of terroristic threatening if the person threatens, by word or conduct, to cause bodily injury to another person . . . :

- (1) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person . . . .

HRS § 707-717(1) (1993) provides:

(1) A person commits the offense of terroristic threatening in the second degree if the person commits terroristic threatening other than as provided in section 707-716.

HRS § 707-716 (1993), in turn, provides, in relevant part:

(1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

- (a) By threatening another person on more than one occasion for the same or similar purpose; or
- (b) By threats made in a common scheme against different persons; or
- (c) Against a public servant . . . ; or
- (d) With the use of a dangerous instrument.

the jury on the offense of Terroristic Threatening II; and 2) failing to define the term "attendant circumstances" in instructing the jury on the offense of abuse of a family or household member.

After a careful review of the record and the briefs submitted by the parties, we hold as follows:

1. The family court did not err in instructing the jury on the mens rea required for Terroristic Threatening II. The family court instructed the jury as follows:

There are two material elements of the offense of Terroristic Threatening in the Second Degree, each of which -- each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

That, on May 29, 2003, in the City and County of Honolulu, on the island of Oahu, Yoji Wachi threatened, by word or conduct, to cause bodily injury -- injury to -- to [the Complaining Witness (CW)]; and

[T]hat Yoji Wachi did so with the intent to -- to terrorize, or in reckless disregard of the risk of terrorizing, [the CW].

(Paragraph format altered from original transcript; emphases added.)

Wachi contends that the Terroristic Threatening II offense requires proof of an additional "general mens rea," namely, that Wachi threatened, by word or conduct, to cause bodily injury to the complaining witness (the CW) "intentionally, knowingly, or recklessly." He argues that the Terroristic Threatening II instruction was defective because it did not require proof of this additional "general mens rea." We disagree. The plain language of HRS Section 707-715 establishes

that the requisite mental state for Terroristic Threatening II is acting "[w]ith the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person." HRS § 707-715(1). The case law supports this conclusion. See State v. Klinge, 92 Hawai'i 577, 586-89, 994 P.2d 509, 518-21 (2000); State v. Alston, 75 Haw. 517, 531-35, 865 P.2d 157, 165-67 (1994). The family court's instruction was proper. It therefore follows that the court's instruction was not "prejudicially insufficient, erroneous, inconsistent, or misleading." State v. Vanstory, 91 Hawai'i 33, 42, 979 P.2d 1059, 1068 (1999).

2. The family court did not err in failing to further define the term "attendant circumstances" in instructing the jury on the offense of abuse of a family or household member. Wachi contends that the term "attendant circumstances" is "a technical legal term that has no meaning to a member of the jury (a non-lawyer) in the context of a criminal case such as the instant one." According to Wachi, because the term "attendant circumstances" was not further defined, the jury had no means of determining that the second material element -- that Wachi and the CW were either family or household members -- was an attendant circumstance. He therefore argues that the jury did not know that it was supposed to apply the portions of the state-of-mind instructions pertaining to attendant circumstances in deciding whether the prosecution had proved the second material element. We disagree with Wachi's arguments.

The term "attendant circumstances" is plain English and has a commonly understood meaning. The jury could easily figure out which element was the attendant circumstances of the abuse of family or household member offense and thus which portions of the state-of-mind instructions to apply. The term "attendant circumstances" was chosen by the Hawai'i Legislature to describe one of the three types of elements that can be specified in an offense. HRS § 702-205 (1993). The Legislature did not further define the term and the family court was not required to do so. State v. Haili, 103 Hawai'i 89, 108-09, 79 P.3d 1263, 1282-83 (2003).

IT IS HEREBY ORDERED that the March 22, 2004, Judgment of the Family Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 26, 2006.

On the briefs:

Earle A. Partington  
for Defendant-Appellant

Daniel H. Shimizu  
Deputy Prosecuting Attorney  
City and County of Honolulu  
for Plaintiff-Appellee

  
Chief Judge

  
Associate Judge

  
Associate Judge