

NOT FOR PUBLICATION

NO. 26624

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JOHN J. K. VIERRA, Defendant-Appellant

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STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Cr. No. 03-1-1013)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant John J. K. Vierra (Vierra) appeals from the Judgment entered by the Circuit Court of the First Circuit^{1/} on May 12, 2004, convicting and sentencing him for Assault in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 707-711(1)(a) (1993). The appeal was filed on June 14, 2004 and assigned to this court on February 15, 2006.

HRS § 707-711(1)(a) provides, in relevant part, as follows:

Assault in the second degree. (1) A person commits the offense of assault in the second degree if:

- (a) The person intentionally or knowingly causes substantial bodily injury to another[.]

Pursuant to HRS § 707-700 (1993), "[s]ubstantial bodily injury" is defined, in pertinent part, as "bodily injury which causes . . . [a] bone fracture[.] HRS § 707-700 defines "[b]odily injury" as "physical pain, illness, or any impairment of physical condition."

^{1/} The Honorable Michael A. Town presided.

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Vierra's defense at trial was that while he intended to cause bodily injury to the complaining witness, he did not intentionally or knowingly cause substantial bodily injury to her. On appeal, Vierra contends that his conviction should be reversed because: (1) there was no substantial evidence that he intentionally or knowingly caused a "bone fracture" to the complaining witness; (2) the circuit court erred in admitting statements made by a radiologist, who was not present at trial to be cross-examined, to the emergency room physician who treated the complaining witness on the evening of February 17, 2003 that contradicted earlier statements made by the radiologist as to the nature of the complaining witness's injuries; and (3) as a matter of law, the fracture of nasal cartilage of the tip of the nose is not a "bone fracture" that qualifies as "substantial bodily injury[.]"

After carefully reviewing the record on appeal and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties, we disagree with Vierra. We note that even without the radiologist's statements that the complaining witness suffered a fracture of the lateral and medial wall of the left orbit on the evening in question, there was substantial evidence that Vierra caused the complaining witness to suffer a nasal bone fracture, which constitutes "substantial bodily injury" as that term is defined in HRS § 707-700.

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Accordingly, we affirm the Judgment from which this appeal was taken.

DATED: Honolulu, Hawai'i, May 17, 2006.

On the briefs:

Naomi Hirayasu for
defendant-appellant.

Loren J. Thomas,
deputy prosecuting attorney,
City and County of Honolulu,
for plaintiff-appellee.

Corinne Kawatanaka

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