

NO. 27432

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
SYLVAIN PILON, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. LC1:7/5/05)

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E.M. RIMANDO
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STATE OF HAWAI'I

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SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Foley and Fujise, JJ.)

At a bench trial in the District Court of the Second Circuit¹ on April 5, 2005,² Defendant-Appellant Sylvain Pilon (Pilon) was found guilty of Harassment, Hawaii Revised Statutes § 711-1106 (1)(b).³ The Notice of Entry of Judgment and/or Order entered on July 5, 2005 sentenced Pilon to pay a \$200 fine and a \$30 criminal injuries fee.

On October 5, 2004, Pilon was charged by complaint as follows:

[O]n or about the 2nd day of April, 2004, in the Division of Hana, County of Maui, State of Hawaii, SYLVAIN PILON, with intent to harass, annoy or alarm another person, did insult, taunt, or challenge John Akana in a manner likely to provoke an immediate

¹ Judge Douglas H. Ige presided.

² There is a discrepancy in record on appeal as to the date of trial. The court calendar shows a trial date of April 5, 2005, but the transcript of proceedings reflect that trial was held on April 25, 2005.

³ Hawaii Revised Statutes § 711-1106 (2005 Supp.) reads in part as follows:

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

.....

(b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;

.....

(2) Harassment is a petty misdemeanor.

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violent response or which would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another, thereby committing the offense of Harassment in violation of Section 711-1106(1)(b) of the Hawaii Revised Statutes.

At the bench trial, Pilon proceeded *pro se* with Deputy Public Defender Jennifer Eng available as standby counsel to assist him with legal procedures and answer legal questions.

Pilon testified that he owned and occupied land adjacent to land occupied by Sam Akoi Sr. (Akoi), father-in-law of John Akana (Akana), who was a Maui police officer. Pilon witnessed and reported to the Maui police the following that occurred upon Akoi's property: acts of cruelty to animals and animals barking. Akana was one of the police officers who responded to Pilon's call. Pilon testified that Akana said, "By the way you're the one who called on my uncle? I said, yeah, that's me. You got a problem with that? He said, yeah, and he starts to kind of pick on me and try to scare me[.]"

Pilon called the Wailuku police station to find out how to press charges against Akana and followed through with repeated and persistent phone calls and letters to the Maui Police Department (MPD). Pilon expressed frustration with the MPD's lack of response to his numerous complaints against Akana. On April 2, 2004, Pilon went to the MPD in the Hana District and gave Officer Kimo Uehara a two-page handwritten letter that was addressed to Lieutenant Molly Klingman. The letter stated as follows:

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Miss Klingman,

Sorry for making you upset. That was not my intention. I assumed that you were furious because I kept calling to reach M. Kikuchi. I called again yesterday. My complaint to M. Kikuchi is that his secretary is diverting my call away from where Yvonne (the secretary of Chief Philips) tell me to call: to M. Kikuchi.

If you don't want to be associated with your friends (ME), I don't understand it but I accept it. But you have to understand something. I am a civilian. I do whatever I want. I respond to no one's orders but my conscience. As for me, what you do after your working time is your choice. You are a free woman, Molly. Of course, if you associated yourself with scumbags it would concern me and I would do something about it. First, I would try to talk to you (because I perceive you as my friend.)

On another subject, SAM AKOI SR has allowed his nephew to bring more dogs in his kennel and the dogs bark constantly, which is very irritating and upsetting. I have given M. AKOI all the chance in the world to change his attitude toward me and the animals. M. Akoi had remove ALL his dog [sic] after my second barking complaint. (I hope you are aware of the process of barking complaints; If not, please contact the H.S. and ask for that information and maybe distribute copies to the officers.[])

The reason I am writing you about AKOI is because Keoni may want to interfere with me trying to deal with the nephew and his dogs. I will go to the property where the dogs are to make them be quiet and also to try to meet the nephew. If Akana pull in this driveway (of the dog pen) I may feel that my life is in danger and I may have to use lethal force against Akana. I am warning you, please warn him.

SYLVAIN

Please call me if you have any questions or comments. 248-7621

(Deletions and corrections in original omitted.)

Pilon filed a notice of appeal on August 3, 2005.

This appeal was assigned to this court on June 20, 2006.

First, Pilon argues that the evidence is insufficient to support the adjudication of guilt for the offense of harassment where (1) he stated only that he "may have to use lethal force against Akana" and (2) the State failed to establish Akana, in light of his training as a police officer, reasonably believed that Pilon intended to cause him bodily injury.

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Second, Pilon argues that his statements in his letter constituted speech protected by the First Amendment to the United States Constitution which thereby did not rise to the level of "fighting words".

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 applying the law relevant to the issues raised and arguments presented,

IT IS HEREBY ORDERED that the judgment entered on July 5, 2005 is affirmed.

DATED: Honolulu, Hawai'i, August 23, 2006.

On the briefs:

Dawn M. Nekoba,
Deputy Public Defender,
for Defendant-Appellant.

Peter A. Hanano,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge