

NOT FOR PUBLICATION

NO. 27446

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
FREDERICK NUNEZ, Defendant-Appellant

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APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
NORTH AND SOUTH HILO DIVISION
(REPORT NO. I-06867)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Frederick Nunez (Nunez) appeals from the Judgment filed in the District Court of the Third Circuit, North and South Hilo Division,^{1/} on July 11, 2005. The Judgment found Nunez guilty of Harassment, Hawaii Revised Statutes (HRS) § 711-1106(1)(a) (Supp. 2005), and sentenced him to 30 days in jail, 15 days suspended for a period of six months on the condition that there be no further violations, and to pay a \$25.00 criminal injuries compensation fund fee.

HRS § 711-1106 specifies that "[a] person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person: (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact[.]"

At the trial on April 27, 2005, evidence was presented that on September 26, 2004 Riley Hirai (Hirai) and his nephew,

^{1/} The Honorable Barbara T. Takase presided.

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Derek Kiyotsuka (Kiyotsuka)^{2/}, were standing on a concrete platform near the edge of the Wailuku River and fishing with rod and reel. Kiyotsuka noticed Nunez approaching them. Nunez tried to push Hirai. Hirai became aware of Nunez when Kiyotsuka shouted to him, "Watch out, Uncle" or something similar. By turning to his right, Hirai avoided a push in the back. Hirai felt a grazing or brushing of his left shoulder and turned to face Nunez. Nunez was backing away with his hands and palms up. Hirai backed away towards his car. Nunez "ruffled" through Hirai's "bucket, bait, some fishing gear" and "[t]ossed it on the ground. Some of it went into the water." Nunez "urinated all over" the "container with the bait inside[.]" Nunez never said a word. Nunez walked up the street and was arrested soon thereafter.

Nunez declined to testify.

On appeal, Nunez argues that there was insufficient evidence (1) "that he intentionally touched Hirai," (2) "that he did so with the intent to harass, annoy, or alarm Hirai," and/or (3) "that the minimal contact constituted an 'offensive' touch."

"[T]he mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances." State v. Birdsall, 88 Hawai'i, 8, 960 P. 2d 729, 737 (1998) (quoting State v. Batson, 73 Haw. 236, 254, 831 P.2d 924, 934 (1992)). When reviewing sufficiency of evidence claims

^{2/} At the time of the trial, witness Derek Kiyotsuka was seventeen years of age.

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on appeal, this court:

[E]mploy[s] the same standard that a trial court applies . . . , namely, whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact, the evidence is sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. Sufficient evidence to support a prima facie case requires substantial evidence as to every material element of the offense charged. Substantial evidence as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. Under such a review, we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact. State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996)[.]

State v. Jenkins, 93 Hawai'i 87, 99, 997 P.2d 13, 25 (2000)

(quoting State v. Timoteo, 87 Hawai'i 108, 112-13, 952 P.2d 865, 869-70 (1997)).

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 issues raised and arguments presented,

IT IS HEREBY ORDERED that the Judgment entered on July 11, 2005 is affirmed.

DATED: Honolulu, Hawai'i, June 22, 2006.

On the briefs:

Nicole K. Gibby,
Deputy Public Defender,
for Defendant-Appellant.


Chief Judge

Glenn H. Shiigi,
Deputy Prosecuting Attorney,
County of Hawaii,
for Plaintiff-Appellee.


Associate Judge


Associate Judge