

NO. 27704

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JOACHIM CUELLAR, Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
NORTH AND SOUTH HILO DIVISION
(Report Nos. I-03552, I-03553)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Nakamura, and Fujise, JJ.)

Defendant-Appellant Joachim Cuellar (Cuellar) appeals from the Notice of Entry of Judgment and Order (the Judgment) entered by the District Court of the Third Circuit (the district court)¹ on October 3, 2005, convicting him of two counts of Harassment, in violation of Hawaii Revised Statutes § 711-1106(1)(f) (Supp. 2005).²

Cuellar raises the following points of error on appeal:

(1) the district court erred in denying his oral motion for judgment of acquittal because Plaintiff-Appellee State of Hawai'i

¹ The Honorable Matthew S.K. Pyun presided.

² Hawaii Revised Statutes § 711-1106 (Supp. 2005) states, in pertinent part, as follows:

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

. . . .

(f) Makes a communication using offensively coarse language that would cause the recipient 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.

adduced insufficient evidence to support the verdict; (2) the district court erred in convicting Cuellar of two counts of Harassment because "there was insufficient evidence to prove that Cuellar acted with the requisite state of mind or used offensively coarse language that would cause a reasonable belief that he intended bodily injury to [the two minor girls who were the complaining witnesses]"; and (3) any statement made by Cuellar to the complaining witnesses was "within the realm of constitutionally protected speech as there was no causal relationship between Cuellar's statement and the disturbance sought to be prevented--the reasonable belief that Cuellar intended to cause bodily injury to [the complaining witnesses]."

Upon careful review of the record, the briefs submitted by the parties, and the statutory and case law relevant to the issues on appeal, and having duly considered the arguments and issues raised by the parties, we disagree with Cuellar. Accordingly, we affirm the Judgment and the order denying Cuellar's oral motion for judgment of acquittal that were challenged by Cuellar on appeal.

DATED: Honolulu, Hawai'i, November 14, 2006.

On the briefs:

Lila C.A. King,
deputy public defender,
State of Hawai'i,
for defendant-appellant.

Stephen A. Sasaki-Power,
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