

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 27620

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

STATE OF HAWAI'I, Plaintiff-Appellee,  
v.  
FRANK PAULICH, Defendant-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CRIMINAL NO. 05-1-1796)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Frank Paulich (Paulich) appeals from the October 27, 2005 Judgment of Conviction and Probation Sentence entered by Judge Rhonda A. Nishimura after a jury found Paulich guilty, as charged, of Assault in the Third Degree, Hawaii Revised Statutes (HRS) § 707-712(1)(a) (1993),<sup>1</sup> and sentenced him to incarceration for thirty days with credit for time served, and probation for one year.

Paulich contends that "[t]here was insufficient evidence to sustain the conviction of assault in the third degree

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<sup>1</sup> Hawaii Revised Statutes § 707-712 (1993) states:

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

- (a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or
- (b) Negligently causes bodily injury to another person with a dangerous instrument.

(2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

under HRS § 707-712. Although there may have been sufficient evidence to find that Paulich caused 'bodily injury' to Cohn, there was insufficient evidence to find that the injury was caused intentionally, knowingly or recklessly."

"We have long held that evidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or a jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed."

"'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. And as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence."

State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995) (quoting State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992)) (brackets in original); see also State v. Reed, 77 Hawai'i 72, 81-82, 881 P.2d 1218, 1227-28 (1994); In re John Doe, Born on January 5, 1976, 76 Hawai'i 85, 92-93, 869 P.2d 1304, 1311-12 (1994); State v. Silva, 75 Haw. 419, 432, 864 P.2d 583, 589-90 (1993).

State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996).

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,

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IT IS HEREBY ORDERED that the October 27, 2005 Judgment of Conviction and Probation Sentence is affirmed.

DATED: Honolulu, Hawai'i, January 11, 2007.

On the briefs:

N. Kanale Sadowski,  
Deputy Public Defender,  
for Defendant-Appellant.

Anne K. Clarkin,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge