

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27705

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROY CORTEZ HERNANDEZ, Defendant-Appellant

NORMA T. YARRA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD Criminal NO. 05438191)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Defendant-Appellant Roy Cortez Hernandez (Hernandez) appeals from the Judgment filed on November 1, 2005 in the District Court of the First Circuit, Honolulu Division (district court).^{1/} On appeal, Hernandez argues that the State of Hawai'i (the State), in its oral charge of Hernandez, failed to state an offense because the charge failed (1) to allege that Hernandez acted with the requisite intent and (2) to name a complainant.

On October 28, 2005, prior to the start of trial, the State orally arraigned Hernandez on the offense of Harassment, in violation of Hawaii Revised Statutes (HRS) § 711-1106(1)(a) (Supp. 2006). The State alleged that on or about October 24, 2005, Hernandez "did strike, shove, kick or otherwise touch another person in an offensive manner or subject another person to offensive physical contact." The oral charge failed to include the following essential element of the offense: "A person commits the offense of harassment if, with intent to

^{1/} The Honorable Leslie Hayashi presided.

harass, annoy, or alarm any other person[.]" HRS § 711-1106(1). Although the oral charge omitted the intent element of the offense, the charge did allege that Hernandez violated subsection (a) of HRS § 711-1106.

On November 1, 2005, the district court found Hernandez guilty of the charged offense and entered its Judgment. Hernandez timely appealed.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude the oral charge of Harassment "cannot within reason be construed to charge a crime." State v. Motta, 66 Haw. 89, 91, 657 P.2d 1019, 1020 (1983). The statutory reference was insufficient "to provide the necessary element missing from the charge[] so as to sufficiently state the offense[] charged against" Hernandez. State v. Elliott, 77 Hawai'i 309, 311, 884 P.2d 372, 374 (1994).

IT IS HEREBY ORDERED that the Judgment filed on November 1, 2005 in the District Court of the First Circuit, Honolulu Division, is reversed.

DATED: Honolulu, Hawai'i, June 25, 2007.

On the briefs:

Phyllis J. Hironaka,
Deputy Public Defender,
for Defendant-Appellant.

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Presiding Judge


Associate Judge


Associate Judge