

NO. 28088

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JOSEPH NAHALE PIIMAUNA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 05-1-0446(1))

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2007 SEP 27 AM 8:00

FILED

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Defendant-Appellant Joseph N. Piimauna (Piimauna) appeals the March 17, 2006 Judgment of the Circuit Court of the Second Circuit (circuit court).¹

Piimauna was charged with Terroristic Threatening in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(c) (1993) (Counts One and Two), Disorderly Conduct in violation of HRS § 711-1101(1)(a) (Supp. 2006) (Count Three), and "Harassment in violation of HRS § 711-1106(1)(a) and/or (b)" (Supp. 2006) (Count Four). These charges stemmed from a confrontation on September 1, 2005, between Piimauna and Maui Police Department Sergeant Paul Bailey (Sergeant Bailey or Bailey).

A bench trial was held in which the circuit court dismissed Counts Two and Three at the close of the State's evidence. At the end of the trial, the circuit court found Piimauna guilty of Count One, and not guilty on Count Four, and sentenced him to incarceration for five years, subject to a mandatory minimum of one year and eight months.

On appeal, Piimauna contends that the circuit court erred in finding him guilty "because the State failed to adduce substantial evidence to prove that Piimauna's remarks toward Bailey were true threats."

After a careful review of the record and the briefs

¹ The Honorable Joel E. August presided.

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submitted by both parties, and having given due consideration to the arguments advanced and the issues as raised, we conclude that there was substantial evidence to support the circuit court's finding of guilt.

We consider the evidence in the light most favorable to the State. State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998). The incident at issue here occurred at about 11:40 p.m. at a park in Hana, Maui, when Sergeant Bailey approached Piimauna and five adults who were friends or relatives of Piimauna and asked them to leave because the park had closed. Sergeant Bailey was unaccompanied at the time, and the nearest on-duty officer was at least 45 minutes away.

Sergeant Bailey, whom the circuit court found to be a credible witness, testified that, during the ensuing confrontation, Piimauna repeatedly stated in a loud, angry voice that he was going to "kick [Bailey's] ass" and "kill him." Bailey testified that at various points during the confrontation, Piimauna got into "the boxing stance" and was "pounding his fists into his hands." When Bailey told Piimauna that he was being placed under arrest, Piimauna's brother-in-law, Duane Beck (Duane), came up to Bailey and grabbed the front of Bailey's shirt twice, and Duane's wife followed, yelling at Bailey. Bailey pushed Duane away, but Duane continued to approach Bailey and put his hands in Bailey's face "like he was blocking" Bailey. Each time that Duane approached Bailey, Piimauna would "come running . . . at [Bailey]," and would get within six to seven feet of Bailey before being pulled away by one of the individuals in Piimauna's group. Bailey testified that Piimauna charged at him at least four or five times.

Bailey testified that he began to feel like "his life was definitely in danger." He called for off-duty officers to come to the scene, and they arrived about 10-15 minutes later.

Officer Dennis Clifton testified that when he and the other off-duty officers arrived, he saw Sergeant Bailey surrounded by Piimauna, Duane, Duane's wife, and one other

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individual. He observed Piimauna "bouncing on both feet, raising his fists and yelling [at Bailey] I am going to get you, you fucking haole, fuck you, white fucker." Sergeant Bailey and Officer Clifton were able to restrain Piimauna and place him under arrest.

Considering the surrounding circumstances, i.e., the language of the threats and the context in which they were made, there was substantial evidence that Piimauna's statements constituted true threats because they were "so unequivocal, unconditional, immediate, and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution." See State v. Valdivia, 95 Hawai'i 465, 477, 24 P.3d 661, 673 (2001) (citing State v. Chung, 75 Haw. 398, 416-17, 862 P.2d 1063, 1073 (1993)).

Moreover, in light of all of these circumstances, there was substantial evidence that Piimauna disregarded a substantial and unjustifiable risk that his conduct was capable of terrorizing Sergeant Bailey.² See HRS § 702-206(3); Chung, 75 Haw. at 412, 862 P.2d at 1071.

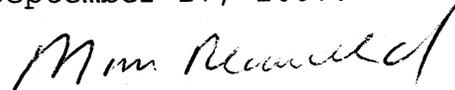
Accordingly, we affirm the March 17, 2006 Judgment of the Circuit Court of the Second Circuit.

DATED: Honolulu, Hawai'i, September 27, 2007.

On the briefs:

James S. Tabe,
Deputy Public Defender,
for Defendant-Appellant.

Gerald K. Enriquez,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge

² "[T]erroristic threatening does not, by its terms, require that the complainant actually be terrorized." State v. Valdivia, 95 Hawai'i 465, 479, 24 P.3d 661, 676 (2001).