

NO. 28168

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

NO. 28168

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
JEFFREY TAYLOR, Defendant-Appellant  
(CR. NO. 06-1-0054(4))

AND

NO. 28169

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
JENNIFER TAYLOR, Defendant-Appellant  
(CR. NO. 06-1-0055(4))

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2008 OCT 17 AM 8:31

FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT

SUMMARY DISPOSITION ORDER

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

Defendants-Appellants Jeffrey Taylor and Jennifer Taylor (collectively, the Taylors) appeal from the September 6, 2006 judgments of conviction filed in the Circuit Court of the Second Circuit (circuit court),<sup>1</sup> finding each of them guilty of disorderly conduct in violation of HRS § 711-1101(1)(b) (1993 & Supp. 2007) and exclusion of intoxicated person from premises in violation of HRS § 281-84 (2007). The charges arose out of an incident occurring at Charley Woofer's Bar (Charley's) in Paia, Maui, which led to the arrest of the Taylors. Jennifer was charged by way of an amended complaint as follows:

COUNT ONE: . . . .

That on or about the 29th day of December, 2005, in the County of Maui, State of Hawaii, JENNIFER TAYLOR, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, did persist in disorderly conduct, to wit, make unreasonable noise after reasonable warning or request to desist, thereby committing the offense of Disorderly Conduct in violation of Section 711-1101(1)(b) of the Hawaii Revised Statutes.

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<sup>1</sup> The Honorable Richard T Bissen, Jr. presided.

COUNT TWO: . . .

That on or about the 29th day of December, 2005, in the County of Maui, State of Hawaii, JENNIFER TAYLOR did, being under the influence of liquor, remain on premises licensed for the sale of liquor after having been requested by the licensee or any person in the licensee's employ to leave the premises, thereby committing the offense of Exclusion of Intoxicated Person From Premises in violation of Section 281-84 of the Hawaii Revised Statutes.

The amended complaint against Jeffrey was identically worded as to both counts except for the identification of the defendant.

A consolidated, jury-waived trial was held. At the close of the State's case, defense counsel moved to dismiss Count One because the amended complaints failed to allege that the defendants engaged in the prohibited conduct with the intent to cause physical inconvenience, and Count Two because the amended complaints failed to define the phrase "under the influence of liquor." The circuit court denied the motion to dismiss.

After the presentation of all the evidence and arguments, the circuit court found the Taylors guilty as charged. The circuit court entered findings of fact and conclusions of law (CoL) on October 18, 2006.

The Taylors appealed their respective judgments. The appeals were consolidated by order of this court on November 29, 2006.

On appeal, the Taylors assert that 1) a number of the circuit court's findings of fact and conclusions of law are erroneous because they are not supported by substantial evidence, 2) the amended complaints failed to properly allege the offense of disorderly conduct, 3) the amended complaints failed to properly allege the offense of exclusion of intoxicated person, 4) there was insufficient evidence to support the convictions for disorderly conduct, and 5) there was insufficient evidence to support the convictions for exclusion of intoxicated person.

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 raised by the parties, we resolve the Taylors' points of error as follows:

(1) We conclude that, with one exception, there is substantial evidence to support the challenged findings of fact and conclusions of law. The one exception is the statement, in CoL 4, that the Taylors were "asked to calm down several times by officers and refused to do so." As we discuss more fully below, there is substantial evidence to support that conclusion with regard to Jeffrey, but not as to Jennifer. We accordingly vacate CoL 4 insofar as it relates to Jennifer.

(2) The amended complaints against the Taylors alleged all of the elements of the offense of disorderly conduct, and the operative fact of persisting to make unreasonable noise "after reasonable warning or request to desist" makes the offense a petty misdemeanor. HRS § 711-1101 (1993 & Supp. 2007); State v. Moser, 107 Hawai'i 159, 167, 171-172, 111 P.3d 54, 62, 66-67 (App. 2005). The amended complaints therefore sufficiently alleged the offense of petty misdemeanor disorderly conduct.

(3) We reject the Taylors' argument that Count Two of the amended complaints was insufficient because it failed to allege the definition of "being under the influence of liquor." A complaint is not required to state the definition of the words or phrases in the complaint. State v. Tuua, 3 Haw. App. 287, 295 n. 4, 649 P.2d 1180, 1186 n. 4 (1982), overruled on other grounds by State v. Motta, 66 Haw. 89, 657 P.2d 1019 (1983). The use of the defined word or phrase in the charging instrument is sufficient to convey the defined meaning. See HRS § 806-26 (1993).

(4) Considering the evidence in the light most favorable to the State of Hawai'i, State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998), we conclude that there was substantial evidence supporting Jeffrey's conviction for petty misdemeanor disorderly conduct. Officer David Wikoli testified, and the circuit court found, that the noise being made by the Taylors caused others around them to yell and talk loudly in reaction to their conduct, supporting the circuit court's conclusion that Jeffrey recklessly created a risk of causing

physical inconvenience or alarm by a member or members of the public.

Jeffrey's reliance on State v. Leung, 79 Hawai'i 538, 904 P.2d 552 (App. 1995) is misplaced. In that case, the defendant used profane language at a theater manager and a police officer in the theater lobby. There was no evidence in Leung that members of the public were physically inconvenienced or alarmed. Id. at 539, 904 P.2d at 553. The court held that evidence of curious pedestrians and theater attendees was not enough. Id. Similarly, in State v. Faulkner, 64 Haw. 101, 104-105, 637 P.2d 770, 773-774 (1981) the court held that an argument or the presence of police attracting the attention of curious pedestrians and motorists did not constitute public inconvenience or alarm. In the present case, the people in the vicinity were not merely curious onlookers but rather were agitated by the conduct of the Taylors.

Jeffrey argues that the noise was not unreasonable. However, considering the lateness of the hour, the fact that the noise made by the Taylors was audible enough for the entire neighborhood, and Jeffrey's refusal to heed the admonitions of Officer Takayama to quiet down, the determination of the circuit court that the noise was unreasonable was supported by substantial evidence. HRS § 711-1101(2) (1993 & Supp. 2007).

In sum, viewing the evidence in the light most favorable to the State, there was substantial evidence to support Jeffrey's conviction.

We come to a different conclusion with respect to Jennifer. One of the elements of the petty misdemeanor disorderly conduct charge is that "the defendant persists in disorderly conduct after reasonable warning or request to desist." HRS § 711-1101(3) (1993 & Supp. 2007); Moser, 107 Hawai'i at 167, 111 P.3d at 62. The circuit court did not enter a factual finding that Jennifer received a reasonable warning or a request to desist. The circuit court did conclude that "the defendants were asked to calm down several times by officers and

refused to do so," but the conclusion is not supported by a corresponding finding of fact, nor was it supported with regard to Jennifer by the evidence at trial. Officer Takayama testified that he instructed Jeffrey to quiet down three times, but he did not mention giving any similar instruction to Jennifer. Officer Wikoli testified that he told Jennifer that he was placing her under arrest and she was irate, but cooperative. Officer Wikoli did not testify that he asked Jennifer to calm down.

Thus, there was not sufficient evidence to support Jennifer's conviction on the petty misdemeanor disorderly conduct charge. There was, however, sufficient evidence to establish that Jennifer violated HRS § 711-1101(1)(b). Accordingly, we vacate Jennifer's conviction on Count One, and remand for entry of judgment and resentencing on the violation.

(5) Considering the evidence in the light most favorable to the State, Richie, 88 Hawai'i at 33, 960 P.2d at 1241, we conclude that there was substantial evidence supporting the Taylors' convictions for exclusion of intoxicated person from premises. The Taylors argue that there was no evidence that they were under the influence of liquor and that any request to leave the premises made in the parking lot was insufficient to support a conviction.

However, there was substantial evidence supporting the circuit court's conclusion that the Taylors were under the influence of liquor. HRS § 281-1 (2007) states, in relevant part:

"Under the influence of liquor" means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person's normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

The circuit court found, and the Taylors did not dispute, that the Taylors had consumed alcoholic beverages prior to their arrival at Charley's. Officer Takayama testified that Jeffrey appeared intoxicated. Officer Wikoli testified that Jennifer appeared intoxicated. Jennifer's conduct of hitting

