

NO. 29167

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
JASON CRAIG, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
(CR. NO. 07-1-0029)

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

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FILED

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Foley and Leonard, JJ.)

Defendant-Appellant Jason Craig (Craig) appeals from the Judgment filed on April 23, 2008 in the Circuit Court of the Fifth Circuit (circuit court).<sup>1</sup> The circuit court convicted Craig of Count I, Assault in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 707-711(1)(b) (1993), and Count III, Operating a Care Home or Hospice Without a License (OCH), in violation of HRS § 321-15.7 (Supp. 2008).

On appeal, Craig contends the circuit court erred (1) by concluding that Craig acted with a reckless state of mind and (2) in convicting Craig pursuant to HRS § 702-203(2) (1993) because that statute is unconstitutionally vague and overbroad. Craig asks this court to reverse the Judgment.

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, as well as the relevant statutory and case law, we resolve Craig's points of error as follows:

(1) The circuit court did not err by concluding that Craig acted with a reckless state of mind. Under HRS § 707-711(1)(b), a person commits the offense of Assault in the Second Degree if the person "recklessly causes serious bodily injury to another person." The term "recklessly" is defined by HRS § 702-206(3) (1993) as follows:

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<sup>1</sup> The Honorable Randal Valenciano presided.

§702-206 Definitions of states of mind.

(3) "Recklessly."

(c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

(d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

(Emphases added.)

The record indicates that (1) Craig had the experience and knowledge to care for the elderly and had agreed to care for Mr. Hirokawa and do "everything [t]hat a patient needs to be done" in exchange for \$4,000 a month; (2) prior to being under Craig's care, Mr. Hirokawa was in stable condition despite his age and existing health challenges; (3) for at least several days to weeks while under Craig's care, Mr. Hirokawa was visibly suffering from serious injuries and illness that created a substantial risk of death or serious bodily injury; and (4) Craig cancelled two of Mr. Hirokawa's scheduled doctor's appointments and failed to seek medical attention for Mr. Hirokawa despite Mr. Hirokawa's apparent "near-fatal" condition.

The foregoing evidence, particularly when viewed in the light strongest for the State, substantially supports the circuit court's conclusion that Craig consciously disregarded the substantial and unjustifiable risk that his failure to seek medical attention for Mr. Hirokawa would cause death or serious bodily injury.

(2) HRS § 702-203(2) is not unconstitutionally vague. Under HRS § 702-203(2), "[p]enal liability may not be based on an omission unaccompanied by action unless: . . . (2) A duty to perform the omitted act is otherwise imposed by law." Craig contends that "a duty imposed by law" is unconstitutionally vague. Under a plain reading of the statute, however, the language is reasonably clear and provides sufficient notice to a

person of ordinary intelligence that failing to affirmatively act when one has a duty to do so because of a special relationship is prohibited. See, e.g., State v. Martinez, 101 Hawai'i 332, 68 P.3d 606 (2003); State v. Bermisa, 104 Hawai'i 387, 90 P.3d 1256 (App. 2004). Craig's vagueness claim is without merit.<sup>2</sup>

Therefore,

The Judgment filed on April 23, 2008 in the Circuit Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 28, 2009.

On the briefs:

Donovan Odo,  
Deputy Public Defender,  
for Defendant-Appellant.

Christopher D.W. Young,  
Michael L. Parrish, and  
Gary K. Senaga,  
Deputy Attorneys General,  
for Plaintiff-Appellee.

*Corinne K. A. Watanabe*

Acting Chief Judge

*Daniel R. Foley*

Associate Judge

*[Signature]*

Associate Judge

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<sup>2</sup> We do not address Craig's claim that HRS § 702-203(2) is unconstitutionally overbroad because Craig failed to provide the reasons for his contention and to cite the authorities, statutes, and parts of the record relied on, as required by Hawai'i Rules of Appellate Procedure Rule 28(b)(7).