

NO. 29259

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
HUBERT U. KANEKOA, Defendant-Appellant

E. J. DINNANDO
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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 06-1-2498)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Hubert U. Kanekoa (Kanekoa) appeals from the Judgment of Conviction and Probation Sentence filed on June 17, 2008 in the Circuit Court of the First Circuit (circuit court).¹ A jury convicted Kanekoa of Terroristic Threatening in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-716(1)(d) (1993).

On appeal, Kanekoa contends the circuit court erred by denying his motion to dismiss and entering a judgment of conviction where (1) Plaintiff-Appellee State of Hawaii (State) failed to prove its case beyond a reasonable doubt; (2) the circuit court resolved disputed factual issues, which were the result of inconsistent statements by the complaining witness; (3) the circuit court gave jury instructions to which Kanekoa had objected; and (4) the verdict was inconsistent with any fair and impartial view of the evidence presented.

Kanekoa's Opening Brief fails to comply with Hawaii Rules of Appellate Procedure Rule 28(b)(3) (statement of the case), (b)(4) (points of error), and (b)(7) (argument). Kanekoa's points on appeal may therefore be disregarded and Kanekoa's arguments waived. Regardless, a review of the briefs, record, and relevant statutes and case law leads to the inevitable conclusion that this appeal is without merit.

¹ The Honorable Michael D. Wilson presided.

(1) To establish an offense of Terroristic Threatening in the First Degree, the State had the burden of proving the following elements beyond a reasonable doubt:

1. That, on or about the 19th day of December, 2005, in the City and County of Honolulu, State of Hawai'i, [Kanekoa] threatened by word or conduct, to cause bodily injury to Kenworth Noa [Noa]; and

2. That [Kanekoa] did so with the use of a dangerous instrument; and

3. That [Kanekoa] did so in reckless disregard of the risk of terrorizing that person.

The [State] also must prove beyond a reasonable doubt that the threat was objectively capable of causing fear of bodily injury in a reasonable person at whom the threat was directed and who was familiar with the circumstances under which the threat was made, and;

(1) the threat on its face and in the circumstances in which it was made must have been so clear, unconditional, immediate, and specific as to the person threatened, that the threat communicated a seriousness of purpose and an imminent likelihood of being carried out; or

(2) [Kanekoa] possessed the apparent ability to carry out the threat, such that the threat was reasonably likely to cause fear of bodily injury in [Noa].

Hawai'i Criminal Jury Instruction No. 9.31; State v. Valdivia, 95 Hawai'i 465, 477, 24 P.3d 661, 673 (2001).

During trial, Noa testified that on December 19, 2005, as he was leaving a gas station, Kanekoa drove a minivan into Noa's car. Noa got out of his car and asked Kanekoa what was going on. Noa testified that Kanekoa then "started threatening me . . . like he was going beat me up. He was going kill me." After Noa returned to his car, Kanekoa again drove his minivan into Noa's car and then followed Noa as Noa drove away. Kanekoa caused the front bumper of his minivan to strike the rear bumper of Noa's car three times as Noa was driving toward the Kailua Police Station. As Noa turned his car from Keolu Drive onto Kalaniana'ole Highway, Kanekoa's minivan hit the side of Noa's car, causing the car to spin into a guardrail. Noa got out of his car and told Kanekoa that he was going to call the police. Kanekoa told Noa that he was going to "kill" Noa if Noa called

the police, and then Kanekoa drove his minivan into Noa, striking and causing Noa to fall over.

Carly Sanchez testified that on December 19, 2005, at the intersection of Keolu Drive and Kalanianaʻole Highway, she witnessed a minivan hit a car, the car drive into a guardrail as a result of being hit, the driver of the car get out and yell at the person driving the minivan, the minivan drive towards the driver of the car, the driver of the car run away from the minivan, the driver of the minivan back up and again head towards the driver of the car, and the driver of the car jump over the guardrail to escape the minivan.

When viewed in the light strongest for the State, the foregoing evidence substantially supports the circuit court's conclusion that on December 19, 2005, Kanekoa threatened to cause Noa bodily injury with the use of a dangerous instrument and in reckless disregard of the risk of terrorizing Noa. The threat of injuring Noa with the minivan was indeed objectively capable of causing fear of bodily injury in a reasonable person and imminently likely to be carried out by Kanekoa.

The standard of review for sufficiency of the evidence is well established; namely, whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact, the evidence is sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. Sufficient evidence to support a prima facie case requires substantial evidence as to every material element of the offense charged. 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. Under such a review, we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact.

State v. Grace, 107 Hawai'i 133, 139, 111 P.3d 28, 34 (App. 2005) (block quote format changed) (quoting State v. Ferrer, 95 Hawai'i 409, 422, 23 P.3d 744, 757 (App. 2001)).

(2) The circuit court appropriately determined the credibility of witnesses. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of

witnesses and the weight of the evidence; this is the province of the trier of fact." State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999) (internal quotation marks and citation omitted).

(3) The circuit court gave the appropriate jury instruction on terroristic threatening. Hawai'i Criminal Jury Instruction No. 9.31; State v. Martins, 106 Hawai'i 136, 144, 102 P.3d 1034, 1042 (2004).

(4) The verdict was supported by substantial evidence. Grace, 107 Hawai'i at 139, 111 P.3d at 34.

Therefore,

IT IS HEREBY ORDERED that the Judgment of Conviction and Probation Sentence filed on June 17, 2008 in the Circuit Court of the First Circuit is affirmed.

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

On the briefs:

James M. Sattler
for Defendant-Appellant.

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.



Presiding Judge



Associate Judge



Associate Judge