

NO. 29264

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ANGEL CARRANCO, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 07-1-0412(3))

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 Fujise, JJ.)

Defendant-Appellant Angel Carranco (Carranco) appeals from the Judgment filed on July 3, 2008, in the Circuit Court of the Second Circuit (circuit court).¹ A jury convicted Carranco of Assault Against a Law Enforcement Officer in the Second Degree (second-degree AALEO) (Count Three), in violation of Hawaii Revised Statutes (HRS) § 707-712.6 (Supp. 2008), and Resisting Arrest (Count V), in violation of HRS § 710-1026 (1993 & Supp. 2008).

On appeal, Carranco contends there was insufficient evidence in the record to support his second-degree AALEO and Resisting Arrest convictions and asks this court to reverse his convictions.

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 Carranco's points of error as follows:

(1) There was sufficient evidence in the record for the circuit court to convict Carranco of second-degree AALEO. Under HRS § 707-712.6, a person commits the offense of second-degree AALEO if the person "recklessly causes bodily injury to a law enforcement officer who is engaged in the performance of

¹ The Honorable Joseph E. Cardoza presided.

duty." The term "recklessly" is defined by HRS § 702-206(3) (1993) as follows:

§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.)

In the instant case, the record establishes that on June 23, 2007, Officer Hale responded to an "abuse type" call at the Carranco residence and was in the process of arresting Carranco's brother when Carranco came at him with a closed fist. Carranco punched Officer Hale behind his right ear, causing the officer to experience pain and swelling. The evidence, viewed in the light strongest for the State, substantially supports the circuit court's conclusion that Carranco consciously disregarded the substantial and unjustifiable risk that his conduct would cause Officer Hale bodily injury and that Carranco in fact caused Officer Hale bodily injury while Officer Hale was engaged in the performance of duty.

(2) There was insufficient evidence in the record for the circuit court to convict Carranco of Resisting Arrest. HRS § 710-1026 provides in relevant part:

§710-1026 **Resisting arrest.** (1) A person commits the offense of resisting arrest if the person intentionally prevents a law enforcement officer acting under color of the law enforcement officer's official authority from effecting an arrest by:

(a) Using or threatening to use physical force against the law enforcement officer or another;
or

(b) Using any other means creating a substantial risk of causing bodily injury to the law enforcement officer or another.

(Emphases added.)

The record indicates that Carranco "stiffened and pulled away" from Officer Pyland when the officer attempted to arrest Carranco. As Carranco argues and the State concedes, Carranco's conduct did not amount to physical force against Officer Pyland or create a substantial risk of causing bodily injury to the officer. Accordingly, we agree with the parties that there was insufficient evidence to convict Carranco of Resisting Arrest.²

Therefore,

The Judgment filed on July 3, 2008 in the Circuit Court of the Second Circuit is reversed as to Count V, Resisting Arrest. The remainder of the Judgment is affirmed.

DATED: Honolulu, Hawai'i, August 12, 2009.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for Defendant-Appellant.

Corinne K. A. Watanabe
Acting Chief Judge

Richard K. Minatoya,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

Daniel R. Foley
Associate Judge

Auna D. S. Fijim
Associate Judge

² As the State discusses in its Answering Brief, the Commentary on HRS § 710-1026 explains that

[t]he Code deals specifically with resisting arrest out of a desire to confine the offense to forcible resistance that involves some substantial danger to the person. Mere non-submission ought not to be an offense. One who runs away from an arresting officer or who makes an effort to shake off the officer's detaining arm might be said to obstruct the officer physically, but this type of evasion or minor scuffling is not unusual in an arrest, nor would it be desirable to make it a criminal offense to flee arrest. In this case the proper social course is to authorize police pursuit and use of reasonable force to effect the arrest. If the actor is captured, the actor may be convicted of the underlying offense. If conviction cannot be had, it would be a grave injustice to permit prosecution for an unsuccessful effort, by an innocent person, to evade the police.

(Emphasis added; footnotes omitted.)