

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29300

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIISTATE OF HAWAII, Plaintiff-Appellee, v.
DANIEL K.C. ANTHONY, Defendant-AppellantCLERK OF APPELLATE COURTS
STATE OF HAWAII
Jeannette Kikimoto

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD CR. NOS. 07421114/1P107-18441;
07421118/1P107-18442)SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting Chief Judge, Fujise and Leonard, JJ.)

Defendant-Appellant Daniel K.C. Anthony (**Anthony**)
appeals the Judgment, entered on July 9, 2008, in the District
Court of the First Circuit, Honolulu Division (**District Court**).^{1/}

Anthony was charged with Harassment, in violation of
Hawaii Revised Statutes (**HRS**) § 711-1106(1)(a) and/or (1)(b)
(Supp. 2007) and Disorderly Conduct, in violation of HRS § 711-
1101(1)(a) and/or (1)(b) (1993 & Supp. 2007). Anthony was
convicted of Harassment and found to have committed the offense
of Disorderly Conduct, "without the intention to cause
substantial harm or serious inconvenience," thus reducing the
offense to a violation,^{2/} pursuant to HRS § 711-1101(3) (1993).

^{1/} The Honorable Edwin Nacino presided.

^{2/} Pursuant to HRS § 701 -107(5), concerning grades and classes of
offenses:

An offense defined by this Code or by any other
statute of this State constitutes a violation if it is so
designated in this Code or in the law defining the offense
or if no other sentence than a fine, or fine and forfeiture
or other civil penalty, is authorized upon conviction or if
it is defined by a statute other than this Code which
provides that the offense shall not constitute a crime. A
violation does not constitute a crime, and conviction of a
violation shall not give rise to any civil disability based
on conviction of a criminal offense.

Anthony raises two points of error on appeal:

1. There was insufficient evidence to convict Anthony of Harassment because the State failed to prove that Anthony had the intent to harass, annoy, or alarm security guard Aaron Okura (Okura); and

2. There was insufficient evidence to convict Anthony of Disorderly Conduct as a violation because the State failed to prove that Anthony recklessly created a risk of causing physical inconvenience or alarm by a member or members of the public or making unreasonable noise.

Upon a thorough review of the record and the briefs submitted by the parties, and having duly considered the issues and arguments raised on appeal, as well as any authorities relevant thereto, we resolve Anthony's contentions as follows:

(1) There was substantial evidence to convict Anthony of Harassment.^{3/} Okura testified, *inter alia*, that Anthony shoved him and was swearing at him. Okura stated that he felt pain when struck in the chest by Anthony and also felt threatened by Anthony's actions. The District Court found Okura to be credible and also relied upon a videotape of the incident.

^{3/} HRS § 711-1106 provides, in relevant part:

§ 711-1106 Harassment. (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

- (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
- (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;

(2) Harassment is a petty misdemeanor.

Although conflicting testimony was also presented, this court will not generally pass on issues dependent upon the credibility of witnesses. State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999).

"Given the difficulty of proving the requisite state of mind by direct evidence in criminal cases, proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient." State v. Agard, 113 Hawai'i 321, 324, 151 P.3d 802, 805 (2007). From the circumstances described by Okura and other witnesses, the District Court could reasonably conclude that Anthony intended to harass, annoy, or alarm Okura and did so by striking Okura and/or insulting, taunting, or challenging Okura. Therefore, there was sufficient evidence concerning the requisite state of mind to convict Anthony of Harassment.

(2) Anthony was orally charged with violating HRS § 711-1101(1)(a) and/or (1)(b).^{4/} There was substantial evidence to find that Anthony acted recklessly and violated HRS § 711-

^{4/} HRS § 711-1101 provides, in relevant part:

§ 711-1101 Disorderly conduct. (1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

- (a) Engages in fighting or threatening, or in violent or tumultuous behavior; or
- (b) Makes unreasonable noise;

(2) Noise is unreasonable, within the meaning of subsection (1)(b), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature of the location and the time of the day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation;

(3) Disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if the defendant persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

1101(1)(a). The District Court did not find that Anthony made unreasonable noise, thus the District Court could not find that he violated HRS § 711-1101(1)(b).

The State argued and witnesses testified that Anthony engaged in fighting or threatening, or in a violent or tumultuous behavior, during an altercation that occurred while Anthony was near an elevator in a Waikiki hotel lobby. As noted above, Okura stated that Anthony shoved him and was swearing at him. Okura also testified that he saw Anthony and another man fighting and head-butting and yelling at each other when he approached. Another security guard stated that he observed Anthony and the other man choking each other. A hotel manager testified that during the incident, a crowd of people collected as the incident progressed. The manager testified that guests and visitors to the hotel were impeded from progressing through the hallway and lobby to access their rooms or cars; he stated that both American and Japanese guests "seemed to be a little-bit tippy-toes, what is going on here and can I get through there, what should I do." Cf. State v. Faulkner, 64 Haw. 101, 104, 637 P.2d 770, 773 (1981) (defendant's conduct did not cause actual physical inconvenience to public when pedestrians or motorists stopped or slowed of their own volition to satisfy their curiosity). The District Court found the security guards to be credible and also relied upon the other witnesses' testimony and a videotape of the incident. As noted above, this court will not generally pass on issues dependent upon the credibility of witnesses. Mattiello, 90 Hawai'i at 259, 978 P.2d at 697. The District Court found that Anthony did not intend to cause substantial harm or serious inconvenience. Without the intent to cause substantial harm or serious inconvenience, Anthony could only be found to have committed a violation of HRS § 711-1101(1)(a). See HRS § 711-1101(3). There was substantial evidence that Anthony engaged in fighting or threatening, or in violent or tumultuous behavior,

during the incident while Anthony was near a hotel elevator, recklessly creating a risk of causing physical inconvenience or alarm by a member or members of the public, thereby violating HRS § 711-1101(1)(a).

For these reasons, we affirm the District Court's July 9, 2008 Judgment.


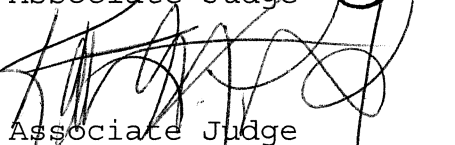
DATED: Honolulu, Hawai'i, August 31, 2009.

On the briefs:

Setsuko Regina Gormley
for Defendant-Appellant

Anne K. Clarkin
for Plaintiff-Appellee


Acting Chief Judge


Associate Judge

Associate Judge