

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29584

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

STATE OF HAWAI'I, Plaintiff-Appellee,  
v.  
DUKE PAAAINA, Defendant-Appellant

K. HAMAKAHO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2009 AUG 28 AM 7:47

FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT  
HILO DIVISION  
(CASE NO. 3P108-00550, POLICE REPORT NO. 048710LNR)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Presiding Judge, Fujise, and Leonard, JJ.)

Defendant-Appellant Duke Paaaina (Paaaina) appeals pro se from the Judgment of Conviction and Sentence (Judgment) entered on March 5, 2009, (filed nunc pro tunc to December 12, 2008) in the District Court of the Third Circuit (district court).<sup>1/</sup> After a bench trial, the district court found Paaaina guilty of taking, injuring, killing, possessing, or removing marine life from the Waiopae Tidepools Marine Life Conservation District (Conservation District), in violation of Hawaii Administrative Rules (HAR) § 13-38-3.<sup>2/</sup> Paaaina was sentenced to

---

<sup>1/</sup> The Honorable Barbara T. Takase presided.

<sup>2/</sup> HAR § 13-38-3 provides in relevant part:

Prohibited activities. No person shall engage in the following activities in the district:

- (1) Take, injure, kill, possess, or remove any marine life[.]

HAR § 13-38-2 defines the terms "district" and "take" as follows:

"District" means the Waiopae Tidepools marine life conservation district.

. . . . .

"Take" means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for,

(continued...)

pay a fine of \$200 and a criminal injuries compensation fee of \$30.

On appeal, Paaaina contends that there was insufficient evidence to convict him because the prosecution failed to introduce substantial evidence that he was fishing within the Conservation District. We disagree.

At trial, Department of Land and Natural Resources (DLNR) Officer Lawrence Terlep, Jr., testified that while off-duty, he saw three men carrying throw nets and actively using their nets within the Conservation District. Officer Terlep called DLNR Officer Verl Nakama and reported observing the three men actively fishing.

Officer Nakama and DLNR Officer Andrew Ford arrived at the scene, and Officer Terlep pointed out the three men he had been observing. Officer Nakama testified that using binoculars, he saw three men holding throw nets and two of the men throw their nets within the Conservation District as they moved toward the southern boundary of the Conservation District. Officer Ford also observed the three men within the Conservation District as they headed toward the southern boundary, and Officer Ford testified that the men would occasionally stop and one of them would throw a net. Officers Nakama and Ford intercepted the three men, who were identified as Paaaina and co-defendants Enoch Akina and Chad Guevarra, about five feet outside the southern border of the Conservation District. The three men had in their possession three throw nets, two white buckets full of fish, and a green duffle bag containing fish.

---

<sup>2/</sup> (...continued)

catch, capture, or harvest, or attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, or harvested, shall be construed as taking.

Paaaina and Akina testified and admitted that they had been fishing. However, they denied that they had been fishing or had caught fish within the Conservation District.

We conclude that when viewed in the light most favorable to the prosecution, State v. Batson, 73 Haw. 236, 248, 831 P.2d 924, 931 (1992), there was substantial evidence to support Paaaina's conviction. We therefore affirm the March 9, 2009, Judgment entered by the district court.

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

On the briefs:

Duke Paaaina  
Defendant-Appellant  
Pro Se

Dakota K. Frenz  
Deputy Prosecuting Attorney  
County of Hawai'i  
for Plaintiff-Appellee

  
Presiding Judge

  
Associate Judge

  
Associate Judge