

NO. 23308

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
JAMES AH YEE, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT  
(FC-CR. NO. 99-0727)

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant James Ah Yee (Ah Yee) appeals the family court's<sup>1</sup> February 22, 2000 judgment, after a bench trial, convicting him of Abuse of Family or Household Members, Hawai'i Revised Statutes (HRS) § 709-906 (Supp. 1999), and sentencing him to seven days in jail with credit for time served, probation for one year subject to specified terms and conditions, and a \$50 criminal injuries compensation fee. The court stayed the sentence pending appeal. We vacate and remand for a new trial.

The alleged offense occurred on November 1, 1999.

I.

RELEVANT STATUTES

HRS § 703-300 (1993) states, in relevant part, that "'believes' means reasonably believes."

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<sup>1</sup> District Family Court Judge Mary Blaine Johnston presided in this case.

HRS § 703-304 (1993) states, in relevant part, as

follows:

**Use of force in self-protection.** (1) Subject to the provisions of this section and of section 703-308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

. . . .

(3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

. . . .

(6) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

## II.

### RELEVANT PRECEDENT

Where the defense is justification, once evidence of a fact, or a set of facts, which negatives penal liability has been introduced, the burden is on the prosecution to disprove the facts that have been introduced or to prove facts negating the justification defense and to do so beyond a reasonable doubt.

State v. Straub, 9 Haw. App. 435, 444, 843 P.2d 1389, 1393 (1993)

(citations omitted).

## III.

### DISPOSITIVE QUESTION

The dispositive question is whether "evidence of a fact, or a set of facts, which negatives penal liability has been introduced[.]" There being only one right answer to this question, it is a question of law. The answer is yes.

IV.

TESTIMONY OF WITNESS

Rebekah Staley (Staley) is the only person who testified. Staley's testimony, in relevant part, is as follows:

Q. And back on November 1st of 1999 who were you living with at that time?

A. Um, James Ah Yee.

. . . .

Q. Do you have any children with him?

A. No.

. . . .

Q. Did you tell police officers that you were arguing about him being sexually unfaithful to you and that made him angry?

A. Yes.

Q. After he came, [sic] in what happened next? After the argument?

A. Um, we had been arguing. I had found out that he had been sleeping with someone else, and I was pregnant and pretty emotional and --

Q. How many months pregnant were you?

A. Um, I was probably a month and a half pregnant at the time.

Q. With James Ah Yee's baby?

A. Yes.

Q. Was he aware you were pregnant?

A. Um, not at that time, no. I don't believe he was at that time.

Q. Okay. And what happened after you were arguing?

A. Ah, we started arguing and I was very, um, I was very angry and very hurt, and I proceeded to hit Mr. Ah Yee, . . . .

. . . .

Q. When you said you hit Mr. Ah Yee, what did you use, a closed fist or open palm?

A. Open palm.

Q. How many times did you hit him?

A. Four, five, at least.

Q. At some point was he trying to kiss you?

A. Yes.

. . . . .

Q. When did you proceed to slap him, before or after he tried to kiss you?

A. After.

. . . . .

Q. What did he do after you slapped him?

A. He, um, grabbed me by the wrist, by the arm, wrist area, and put me up against the wall, just to try to restrain me.

Q. Okay. Did he -- you were in the living room at this time?

A. Yes.

Q. What wall did he put you up against?

A. The hallway.

Q. How did you get from the living room to the hallway?

A. Um, he just kind of walked me over.

. . . . .

Q. Did you tell the police officers that he took you by both wrists and dragged you down the hallway?

A. Yes, I did.

Q. How many feet is it from the living room to the hallway?

A. 12, 15.

. . . . .

Q. After you went down the hallway, what happened next?

A. He pushed me up against the wall.

Q. When he was pushing you up against the wall, what part of your body was his hands on?

A. My wrists and my arm area.

Q. And when he pushed you up against the wall, did that cause you pain?

A. A little bit. . . .

. . . .

Q. And when he was holding your wrists, did that hurt?

A. A little bit.

. . . .

Q. When he firmly held you against the wall, did he use anything (inaudible)?

. . . .

A. He just said, do you want to fuck with me.

. . . .

Q. After you slapped him four to five times, did you stop slapping him or did he have to grab you to stop?

A. He had to grab me to stop.

. . . .

Q. And how long did he hold you against the wall?

A. I don't recall that. You know, maybe -- I would be hard to put a time limit on that, but I wouldn't say, you know, more than a few moments.

Q. Did your head strike the wall?

A. Yes.

. . . .

Q. What's the complete statement that you wrote?

A. He grabbed and twisted my wrist trying to get me in the house. Pushed me against the wall and hit my head and back against the wall.

Q. Okay. And what parts of your body hurts, harmed or has injuries. What did you write?

A. My head, and my wrist and neck, left hand.

. . . .

Q. And, Rebekah, what is your relationship with James Ah Yee today?

A. Um, James and I are friends. We see each other at narcotics anonymous meetings.

. . . .

Q. Do you want to be here today testifying?

A. I want to be here to try to make things right. That's all I want to do.

Q. And do you think making things right means that James shouldn't be held responsible for anything?

A. My feeling is that -- if I may, my feeling is that what I did, I was pregnant, and I was angry, and I feel that I overreacted and I feel that I had bad intentions at that time. And I am involved in NA and I feel that where I'm at today is a different place and that it was not healthy what I did, and I just feel that James should not have to pay for my actions.

. . . .

THE COURT: Okay. Okay.

Probably Ms. Staley shouldn't have slapped the defendant. Defendant certainly shouldn't have done what he did to Ms. Staley. It is the defendant, Mr. Ah Yee, that's on trial today, and the Court is going to find beyond a reasonable doubt that he is guilty of the crime of abuse of a household member.

[DEFENSE COUNSEL]: Your Honor, may I request for the right that there be specifically findings of fact as to his issue of self defense, whether or not he was using justifiable force, and (inaudible).

THE COURT: Okay. I find that no evidence from the testimony that was offered by the one witness that testified that he was acting out of self-defense. Just factually I don't find it.

[DEFENSE COUNSEL]: So the facts as stated, that he grabbed her wrists after she slapped him --

THE COURT: Yeah, right, the Court doesn't view that as an act of self defense. Okay.

All right, did you want to speak to sentencing?

[DEPUTY PROSECUTING ATTORNEY]: . . . .

. . . .

Because of his record, the State is requesting the imposition of a 10 day jail sentence, one year probation, and anger management classes.

. . . .

THE DEFENDANT: . . . .

I'm doing everything that the State is asking of me. I'm getting parenting. I'm doing everything to get my kids back, to get my life back in order.

THE COURT: Okay. I appreciate that -- the road that you're on, but the State didn't ask you to hit [Staley] -- I mean to grab the wrists of [Staley] and push her against the wall. So obviously the anger management course you went through is not -- the message hasn't gotten through yet.

. . . .

So the Court is going to impose sentence as follows. I'll go through and do the whole sentence and your attorney's indicated that he's going to ask for an appeal. So I'll stay the sentence until after the appeal, and it could take -- I don't know how long it's taking now, a couple years maybe.

Okay. The Court's going to sentence the defendant to seven days in jail, with credit for time served, one year probation.

You are to report immediately to the Adult Services Branch located in Suite 206 of this building within five working days of your release from incarceration. Assuming that the Court's upheld on appeal and you have to serve the time, this will be the sentence.

. . . .

. . . You must make telephone or personal contact with the Family Peace Center within five working days of your release from incarceration to schedule an intake interview with their program, . . . .

Unless found inappropriate for Family Peace Center program you're ordered to participate in the program until clinically discharged and comply with all the rules the program has provided to you in writing.

You must complete a financial statement for your probation officer who's authorized to determine what amount you will pay towards the cost of Family Peace Center program. Family Court funds may be expended for the balance.

You must sign waivers of confidentiality necessary to allow the release of relevant information between the Family Court and any agencies providing services in connection with judgment, and pursuant to Act 206 you must pay a \$50.00 criminal injuries compensation fee within 30 days of release from incarceration.

V.

DISCUSSION

As noted above, "once evidence of a fact, or a set of facts, which negatives penal liability has been introduced, the burden is on the prosecution to disprove the facts that have been introduced or to prove facts negating the justification defense and to do so beyond a reasonable doubt." Straub, supra.

Ah Yee was authorized to use the force "immediately necessary for the purpose of protecting him himself against" Staley's slaps. Evidence of a fact which negatives penal liability was introduced when Staley testified that "[Ah Yee], um, grabbed me by the wrist, by the arm, wrist area, and put me up against the wall, just to try to restrain me." It was within the court's power to believe that evidence and disbelieve all other evidence, including all of Staley's other testimony.

The court orally decided that "I find that no evidence from the testimony that was offered by the one witness that testified that he was acting out of self-defense. Just factually I don't find it." It may be that the court was considering only the credible evidence, but that is not what the court said. Moreover, since evidence of a fact which negatives penal liability was introduced, the burden was on the prosecution to disprove that fact or to prove a fact negating the justification defense and to do so beyond a reasonable doubt.



The fact that the court did not mention this burden, and did not decide whether the prosecution had satisfied it, indicate that it did not consider it to have been in existence.

VI.

CONCLUSION

Accordingly, we vacate the family court's February 22, 2000 judgment convicting Defendant-Appellant James Ah Yee of Abuse of Family or Household Members, Hawai'i Revised Statutes § 709-906 (Supp. 1999), and remand for a new trial.

DATED: Honolulu, Hawai'i, May 23, 2001.

On the briefs:

John M. Tonaki, Deputy Public Defender, for Defendant-Appellant.	Chief Judge
Richard K. Minatoya, Deputy Prosecuting Attorney, County of Maui, for Plaintiff-Appellee.	Associate Judge
	Associate Judge