

NO. 23512

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHARLES KAMAKA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(REPORT NO. 00005808)

MEMORANDUM OPINION

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

Defendant-Appellant Charles Kamaka (Charles) appeals the district court's¹ April 25, 2000 Judgment convicting him of Criminal Property Damage in the Fourth Degree, Hawaii Revised Statutes (HRS) § 708-823(1) (1993). The court fined Charles \$150 and ordered him to pay \$25 to the criminal injury compensation fund and to undergo and complete anger management counseling. We affirm.

BACKGROUND

On January 4, 2000, Charles was residing across the street from the house of his brother, Albert Kamaka (Albert). Albert testified that, at around 7:00 p.m., Charles came over to Albert's house to talk. Charles asked Albert for some money and Albert denied the request. Charles was hungry so Albert's wife made him a plate of food to eat. After eating, Charles left.

¹ District Court Judge Paula Devens presided in this case.

Charles returned around 10:00 p.m. and knocked on a glass sliding door located in the back of Albert's garage. Albert saw who it was, opened the door "about a foot," and asked Charles "what he wanted." Charles responded that "he wanted to borrow, you know, [Albert's] wife's car." Albert responded, "Charles, I only have one car. . . . [I]f you were to get into an accident, I have no means of taking, of transporting my wife and my [grand kids] to work or school."

Albert testified that after Charles spent ten minutes repeatedly asking, without success, for use of the car, Charles lost his cool and kicked Albert's "sliding door in off the track and kinda bent the rail." Albert assumed that Charles "kick[ed] it with his right foot." The force of the kick "bent the, the tracks and then the door just slide off . . . the track." The door was moved about a foot and a half into Albert's home. While Albert called the police, Charles walked to Albert's sister-in-law's house "about 700 yards away." Albert lived at his house for "fifty-some-odd years" and never gave Charles permission to kick in the sliding door.

At around 10:45 p.m., Officer Modesto Ramos (Officer Ramos) responded to the call. He testified that he saw (1) the metal track and (2) the glass sliding door off the metal track and in Albert's house. He stated the metal track "looked bent . . . like it would have to take a hard hit to set it off track."

Officer Ramos helped Albert place the door back on track.

Officer Ramos testified the sliding door was "heavy" and "you'd have to hit it hard" to knock the door off of the track.

After Officer Ramos testified, Plaintiff-Appellee State of Hawai'i (the State) rested and Charles moved for judgment of acquittal based on the alleged facts "that the sliding door was not damaged at all and [Charles] didn't touch the sliding door[.]" "[F]inding that the State has put forth a prima facie case[,]" the court denied the motion.

Charles then testified that he asked Albert for permission "to use one of the cars there" which included Albert's daughter's car. Charles denied kicking or pushing in the door. All he did was lean his left hand "on the door frame itself" because his bad back and bad knee get sore every time he has to stand up for a long period of time. He testified that he "cannot kick with [his] right foot" because he has "a bad knee on that side[.]"

Charles accused Officer Ramos of "lying" when testifying that the door was heavy. Charles added, "It's a very old track. So you know how many times that thing must've been popped out of that track?"

Then Albert testified that he had the door for 10 years and at no time was there any bent track damage and that the

"damage that occurred was only the result of [Charles] kicking [Albert's] door."

The court decided that it "finds from the credible evidence adduced that the State has carried its burden of proof in this matter and that burden is proof beyond a reasonable doubt."

DISCUSSION

In his amended opening brief, Charles stated his somewhat disguised point on appeal, in relevant part, as follows:

In this case, there were several instances where crucial testimony regarding the expertise of [Charles] and evidence that the sliding glass door was previously broken was not properly considered. [Charles] asserted at trial that these are a [sic] very important points that should have been more carefully considered by the Judge and that he had been prejudiced by the judge.

. . . .

[Charles] contends that all evidence pertaining to the prior damage in the door and the facts that he and his brother are feuding should have been more carefully considered. . . . In this case, evidence of the feud between [Charles] and [Albert] and the fact that the sliding door was previously damaged would be probative of criminal intent and whether a criminal act occurred at all.

(Transcript citations omitted.)

We note that (1) there was evidence of a lack of aloha between brothers Charles and Albert and (2) there was no evidence that "the sliding door was previously damaged."

In essence, Charles is complaining about the trial court's failure to be sufficiently impressed with evidence of "the feud between [Charles] and [Albert]" and "the fact that the sliding door was previously damaged" so as to find him not

guilty. In other words, Charles is contending that the trial court's implicit findings of fact that Charles intentionally kicked in the sliding door of Albert's house causing the track on which the sliding door moved to bend and forcing the sliding door about a foot and a half into Albert's house are clearly erroneous.

A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made. State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995).

State v. Ferm, 94 Hawai'i 17, 26, 9 P.3d 193, 202 (App. 2000).

During a criminal bench trial, trial courts are regularly called upon to consider the credibility of witnesses and weigh the evidence. We must give due deference to their ability to separate a determination of credibility and weighing of the evidence from the application of the proper standard of proof - beyond a reasonable doubt. State v. Aplaca, 74 Haw. 54, 65, 837 P.2d 1298, 1304-05 (1992).

Id. at 27, 9 P.3d at 203.

Applying the clearly erroneous standard of appellate review to the implicit findings of fact challenged in this appeal, our decision is that none of those implicit findings of fact are clearly erroneous.

CONCLUSION

Accordingly, we affirm the district court's April 25, 2000 Judgment convicting Defendant-Appellant Charles Kamaka of

Criminal Property Damage in the Fourth Degree, HRS § 708-823(1)
(1993).

DATED: Honolulu, Hawai'i, August 9, 2001.

On the briefs:

Edward J. S. F. Smith
for Defendant-Appellant.

Chief Judge

Mangmang Qiu Brown,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge