Citation/Title
110 P.3d 418, 107 Hawai'i 94, State v. Narmore, (Hawai'i App. 2005)

***418** 110 P.3d 418

107 Hawai'i 94

Unpublished disposition. See HI R RAP Rule 35 before citing.

Intermediate Court of Appeals of Hawai'i.

STATE of Hawai'i, Plaintiff-Appellee,
v.
Ned NARMORE, Defendant-Appellant.

No. 26107.
May 6, 2005.

Appeal from the Circuit Court of the First Circuit (Cr.Nos.02-1-2591, 02-1-2592, 02-1-2594).

Catherine H. Remigio, Deputy Public Defender, on the briefs, for Defendant-Appellant.

Loren J. Thomas, Deputy Prosecuting Attorney City and County of Honolulu, on the briefs, for Plaintiff-Appellee.

WATANABE, Acting C.J., LIM and NAKAMURA, JJ.

SUMMARY DISPOSITION ORDER

Defendant-Appellant Ned Narmore (Narmore) appeals from the Judgments in Cr. No. 02-1-2591, Cr. No. 02-1-2592, and Cr. No. 02-1-2594, which were filed on August 25, 2003 in the Circuit Court of the First Circuit (circuit court). (FN1) A jury found Narmore guilty of three charges of violating an injunction against harassment, in violation of Hawaii Revised Statutes (HRS) § 604-10.5(h) (Supp.2004). (FN2) The Alana family (the Alanas), who lived next door to Narmore, had obtained an injunction against Narmore which, in pertinent part, enjoined Narmore from "contacting, threatening, or harassing any person(s) residing at [the Alanas'] residence" or "[e]ntering and/or visiting [the Alanas'] residence, including yard and garage[.]" The three guilty verdicts against Narmore pertained to the following alleged violations of the injunction: 1) Narmore's driving his car down the Alanas' driveway on April 11, 2002; 2) Narmore's twice throwing urine onto the Alanas' property on May 23, 2002; and 3) Narmore's throwing dog feces on Patrick Alana on November 6, 2002.

Narmore was sentenced on his three convictions to a one-year term of probation.

As conditions of his probation, Narmore was ordered, among other things, to serve a term of imprisonment of 74 days (which he had already served), to pay a $75 probation fee and $150 to the Criminal Injury Compensation Fund, and to stay away from the Alanas.

On appeal, Narmore claims that there was insufficient evidence to support his convictions for violating the injunction on April 11, 2002 and May 23, 2003. (FN3) After a careful review of the record and the briefs submitted by the parties, we conclude that Narmore's claims are without merit.

I.

One of the Alanas' minor sons (the Minor Son) testified that on April 11, 2002, Narmore drove his car all the way down the Alanas' driveway, but did not enter the Alanas' yard or the area fronting the Alanas' house. When the Minor Son walked up to Narmore's car, Narmore revved the car's engine and reversed out of the driveway. Narmore argues that the Minor Son's testimony, even if accepted as true, was insufficient to prove that Narmore violated the injunction's prohibition against Narmore's "entering and/or visiting [the Alanas'] residence, including yard and garage." We disagree.

Narmore's argument is premised on construing the term "residence" as used in the injunction to only mean the physical structure of the Alanas' house. We conclude, however, that the term "residence" as used in the injunction refers to and encompasses the Alanas' entire premises or property. The injunction prohibits Narmore from "entering or visiting the Alanas' residence, *including* yard and garage." Because the physical structure of the Alanas' house does not *include* the Alanas' yard and garage, the term "residence" cannot be limited to the Alanas' residential structure and must mean the Alanas' residential property. The injunction gave Narmore fair warning that he could not enter or visit the Alanas' residential property. The evidence that Narmore drove his car down the Alanas' driveway was sufficient to prove Narmore's knowing violation of the injunction.

II.

The Alanas' adult son (the Adult Son) testified that on May 23, 2002, he saw Narmore throw urine onto a tarp on the Alanas' property. Some of the urine splashed onto the Adult Son's shirt. Later, when the Adult Son went inside to change his clothes, he saw urine, being thrown from the direction of Narmore's house, hitting the screen to a window in the Adult Son's room.

Narmore contends that there was insufficient evidence that his conduct on May 23, 2002 violated the injunction's prohibition against "harassing" members of the Alana family. The pertinent portion of the circuit court's instruction to the jury on the meaning of "harassment" was as follows:

Harassment with respect to the Injunction Against Harassment, means:

...

2. Intentional or knowing conduct directed at an individual that seriously alarms or disturbs or bothers the individual and that serves no legitimate purpose, provided that such conduct would cause a reasonable person to suffer emotional distress.

Narmore's main contention is that his conduct was not "directed at an individual" as required by the court's instruction because there was no evidence that he intended to hit the Adult Son with the urine. We disagree.

***418** The evidence showed that Narmore's purpose in throwing the urine onto the Alanas' property was to disturb or bother members of the Alana family. This was sufficient to show that Narmore's conduct was "directed at an individual," namely, the Adult Son as well as any other member of the Alana family. An intent to hit a member of the Alana family with the urine was not required for Narmore's conduct to be directed at them. Under Narmore's flawed interpretation of the court's harassment instruction, Narmore could bombard the Alanas' property with urine and other noxious substances without violating the injunction, as long as he waited until the Alanas were not home or he refrained from aiming at a member of the Alana family. We refuse to adopt Narmore's interpretation of the court's instruction that would lead to such an absurd result. We also reject Narmore's suggestion that there was insufficient evidence to show that his conduct would cause a reasonable person to suffer emotional distress.

III.

IT IS HEREBY ORDERED that the Judgments of the Circuit Court of the First Circuit that were filed on August 25, 2003 in Cr. No. 02-1-2591, Cr. No. 02-1-2592, and Cr. No. 02-1-2594 are affirmed.

(FN1.) The Honorable Derrick H.M. Chan presided.

(FN2.) Hawaii Revised Statutes (HRS) § 604-10.5(h) (Supp.2004) provides in relevant part that "[a] knowing or intentional violation of a restraining order or injunction issued pursuant to [HRS § 604-10.5] is a misdemeanor."

(FN3.) On appeal, Defendant-Appellant Ned Narmore (Narmore) did not raise any argument attacking his conviction or sentence in Cr. No. 02-1-2594 for violating the injunction on November 6, 2002. Accordingly, he waived his right to challenge his conviction and sentence on that charge. Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7) ("Points not argued may be deemed waived.")