

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Unpublished disposition.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.

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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: