

SUPREME COURT OF HAWAI‘I

State v. Kalani

108 Haw. 279 (2005) (Supreme Court of Hawai‘i 2005) · No. No. 26767 · Decided September 7, 2005

SUMMARY

The Supreme Court of Hawai‘i affirmed Ronald Kalani’s convictions for two counts of third-degree sexual assault. The court held that forcibly placing the tongue into a nine-year-old child’s mouth constituted sexual contact involving an intimate part under Hawai‘i Revised Statutes § 707-700. The court also rejected Kalani’s challenges based on statutory vagueness and the rule of lenity.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Mark J. Bennett Moon, Chief Justice; Moon, C.J.; Levinson, J.; Nakayama, J.; Acoba, J.; Duffy, J.
JURISDICTION	Hawaii
DECIDED	September 7, 2005
DOCKET	No. 26767
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his conviction and sentence for two counts of sexual assault in the third degree following a bench trial in the Circuit Court of the Second Circuit.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. The constitutionality of a statute is reviewed under the right/wrong standard.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Hawai‘i; precedential.
PARTIES	Ronald Kalani v. State of Hawai‘i

TOPICS

- statutory interpretation
- ejusdem generis
- legislative history
- void for vagueness
- rule of lenity

PRACTICE AREAS

- criminal law
- constitutional law
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether inserting one's tongue into the mouth of a child while kissing constitutes touching of an intimate part and therefore sexual contact under HRS § 707-700.
2. Whether the indictment should have been dismissed for insufficient evidence to establish probable cause.
3. Whether the circuit court erred in denying the motion for judgment of acquittal.
4. Whether HRS § 707-700 is unconstitutionally vague as applied to the charged conduct.
5. Whether the rule of lenity required vacatur of Kalani's convictions and sentences.

HOLDINGS

1. Contact with the interior of the mouth constitutes touching of an intimate part under HRS § 707-700's definition of sexual contact.
2. The circuit court properly denied the motion to dismiss because the evidence before the grand jury established probable cause that Kalani violated HRS § 707-732.
3. The circuit court properly denied the motion for judgment of acquittal.
4. HRS § 707-700 is not unconstitutionally vague as applied to forcibly placing an adult's tongue inside a nine-year-old child's mouth during nonconsensual kissing.
5. The rule of lenity did not apply because the term intimate parts in HRS § 707-700 was not ambiguous as applied to the interior of the mouth.

KEY QUOTATIONS

“Based on the plain language and legislative history of HRS § 707-700 and construing the definition of “sexual contact” with reference to other definitions relating to sexual relations in HRS §§ 707-700 and 712-1210, we hold that contact with the interior of the mouth constitutes “touching of . . . intimate parts” under the definition of “sexual contact” in HRS § 707-700.” (118 P.3d at 1230)

“Accordingly, with respect to the conduct in this case, we hold that Kalani fails to demonstrate that HRS § 707-700 is unconstitutionally vague.” (118 P.3d at 1231)

“In the instant case, as noted supra, the term “intimate parts,” as used in HRS § 707-700 is not ambiguous and both the legislative history and this court's prior opinions demonstrate that the interior of the mouth is a part of the body typically associated with sexual relations.” (118 P.3d at 1231)

FACTUAL BACKGROUND

Kalani, age fifty-five, twice kissed a nine-year-old girl and inserted his tongue into her mouth without her consent. The child reported the conduct while crying hysterically, and Kalani later admitted during a police interview that he had twice kissed the child and placed his tongue in her mouth. The circuit court found that Kalani forcibly placed his mouth on the child's mouth on two occasions and that his tongue touched hers.

PROCEDURAL HISTORY

Kalani was indicted on two counts of third-degree sexual assault. The circuit court denied his motion to dismiss the indictment and his motion for judgment of acquittal, convicted him after a bench trial, and sentenced him to concurrent five-year terms of imprisonment. The Supreme Court of Hawai‘i affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Kaua, 102 Hawai‘i 1, 72 P.3d 473 (2003)
- State v. Bates, 84 Hawai‘i 211, 933 P.2d 48 (1997)
- State v. Mueller, 102 Hawai‘i 391, 76 P.3d 943 (2003)
- State v. Cummings, 101 Hawai‘i 139, 63 P.3d 1109 (2003)
- State v. Sorenson, 44 Haw. 601, 359 P.2d 289 (1961)
- Williamson v. Hawai‘i Paroling Auth., 97 Hawai‘i 183, 35 P.3d 210 (2001)
- State v. Chen, 77 Hawai‘i 329, 884 P.2d 392 (App. 1994), cert. denied, 77 Hawai‘i 489, 889 P.2d 66 (1994)
- Peterson v. Hawai‘i Elec. Light Co., 85 Hawai‘i 322, 944 P.2d 1265 (1997)
- Richardson v. City & County of Honolulu, 76 Hawai‘i 46, 868 P.2d 1193 (1994)
- State v. Rodgers, 68 Haw. 438, 718 P.2d 275 (1986)
- State v. Marley, 54 Haw. 450, 509 P.2d 1095 (1973)
- State v. Richie, 88 Hawai‘i 19, 960 P.2d 1227 (1998)
- State v. Lunceford, 66 Haw. 493, 666 P.2d 588 (1983)
- State v. Shimabukuro, 100 Hawai‘i 324, 60 P.3d 274 (2002)

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