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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,)
)
)
 Plaintiff,)
)
)
 vs.)
)
 ABEL R. OLOPAI,)
)
)
 Defendant.)

CRIMINAL ACTION NO. 91-34

DECISION

FACTS

On December 15, 1990, the Defendant, two members of his family, and one of his employees were traveling across property belonging to the Complainant's sister, Dominina Olopai, enroute to the Defendant's property. At the time of the alleged incident, the Defendant was crossing this land without the benefit of the owner's permission or any other legal authority for being on the land. The Defendant attempted to present some evidence that this road was public, but this proof was insufficient and immaterial to a resolution of the issues presented.

During the Defendant's journey, he came upon some building materials and a sofa that were blocking his path. The Defendant and his entourage took the liberty of moving the sofa from the roadway and then proceeded to drive a bulldozer over the remaining materials. These materials consisted of some 2 x 4's and roofing tins which the landowner estimates were worth between \$200.00 and \$300.00.

The Complainant and her sister were visiting the property on the day in question. While on the property, the Complainant saw the Defendant's bulldozer, charged the bulldozer, and signalled the driver to stop. When the driver continued to move forward she threw a rock at him. At this time, the driver stopped the bulldozer.

The Defendant told the driver to continue moving forward. When the driver refused to keep going, the Defendant ordered him from the bulldozer and took command of the controls. The Defendant continued forward towards the Complainant, causing rubble and dirt to be pushed upon her legs. The Complainant subsequently signed a complaint against the Defendant. The Defendant was charged with Assault and Battery and Criminal Mischief.

ASSAULT AND BATTERY

6 CMC § 1202 states that "[a] person commits the offense of Assault and Battery if the person unlawfully strikes, beats, wounds, or otherwise does bodily harm to another" (emphasis added).

The Defendant contends that this section only allows the Court to find him guilty of this charge if it is shown that the scratches on Complainant's legs were the sole result of the dirt and other

debris being pushed upon them with the bulldozer. This is an obvious misreading of the statute. The statute does not require bodily harm for an assault and battery to occur. Once an individual unlawfully "strikes, beats" or "wounds" another person, the statute has been violated. See, Lafave & Scott, Criminal Law, 604 (1972) ("[a] temporarily painful blow will suffice, though afterward there is no wound or bruise or even pain to show for it").

If the Court accepted the Defendant's argument it would follow that the Defendant could have run the Complainant over with the bulldozer without violating the statute so long as she did not incur any visible physical injuries. The Court is not willing to adopt this interpretation of § 1202.

Defendant also claims he did not have the requisite intent to commit assault and battery as defined by 6 CMC § 1202. This claim is without merit. The Defendant clearly intended to do harm to the Complainant. The Defendant ordered his employee from the bulldozer, took command of the controls, and proceeded toward the Complainant with no regard for her safety. These are clearly the actions of a man intending to do harm. Therefore, the Court need not decide whether reckless conduct is sufficient to establish intent. See, *State v. Tamanaha*, 377 P.2d 688 (Hawaii 1962). Such overt acts clearly satisfy any implied criminal intent requirement that may exist.

The Defendant also claims that his actions were justified since he was acting in self-defense. The Court summarily rejects this

defense because the Defendant's version of the incident is not credible. The Defendant first argues that he could not have driven the bulldozer because he was unaware of how to operate it. Now the Defendant argues that in order to protect himself he climbed onto a bulldozer which he did not know how to operate, and raised the blade in self-defense to repel the Complainant's rock attack, thus causing the dirt and debris to be pushed onto her legs. Such an explanation is clearly fictional and does not support a claim of self-defense.

Furthermore, the Defendant could only use the amount of force necessary to repel the Complainant's rock throwing attack. *Flowers v. Campbell*, 725 P.2d 1295, 1296 (Or. App. 1986). The use of a bulldozer to defend against a thrown rock clearly exceeds the amount of force necessary to repel the attack.

CRIMINAL MISCHIEF

An individual commits the crime of Criminal Mischief if he or she intentionally or knowingly causes damage to the property of another. 6 CMC § 1803(a)(i).

The Defendant argues that because he stopped the bulldozer, moved the sofa out of the path of the bulldozer and determined that the remaining items had no value, he did not have the intent to do harm to the landowner's property when he crushed the roofing tins and 2 x 4's. The Defendant claims that because he stopped and assessed the relative value of the materials before he crushed them, he did not have the intent necessary to commit criminal mischief. The Defendant's argument is clearly without merit. The statute does not

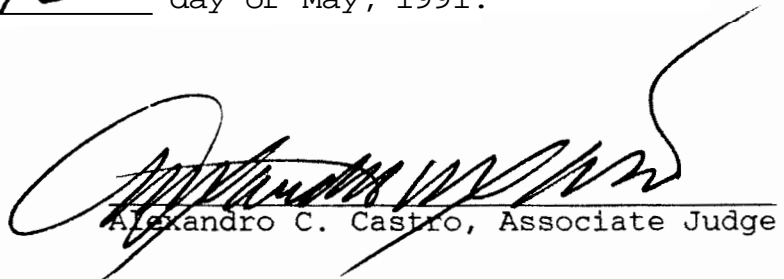
allow a Defendant to justify his or her destruction of another person's property by making a subjective value judgment as to its worth before inflicting the damage. Once he "intentionally or knowingly" damages the property of another, a prima facie case is established.

The Defendant admits that he destroyed the property knowingly. His only defense is that he determined that the materials had no value. Since the Court finds that this is no defense, the Defendant is guilty of Criminal Mischief.

The Court also finds that sufficient grounds exist for the payment of restitution for the value of the goods destroyed. *See, State v. Hart*, 699 P.2d 1113, 1121 (Or. 1985) (restitution proper in a criminal proceeding where the amount has reasonable relationship to offender's conduct). It is the Court's hope that payment of this restitution will help the Defendant realize that he may not destroy the property of others without suffering the consequences of his actions.

Based on the foregoing opinion, the Court finds the Defendant **GUILTY** of **Assault** and **Battery** and **Criminal Mischief** beyond a reasonable doubt as defined by 6 CMC § 1202 and 6 CMC § 1803, respectively.

Entered this 15 day of May, 1991.


Alexandro C. Castro, Associate Judge