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 NOT FOR PUBLICATION
 

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NO. 27373

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
LEASAPAI ALAILEFALEULA, Defendant-Appellant,  
and MICAIAH McCULLAH, Defendant  
(Cr. No. 03-1-0777)

AND

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
LEASAPAI ALAILEFALEULA, Defendant-Appellant  
(Cr. No. 04-1-0303)

NORMA T. YARA  
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 STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NOS. 03-1-0777 and 04-1-0303)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Leasapai Alailefaleula

(Alailefaleula) appeals from the Judgments entered by the Circuit Court of the First Circuit<sup>1</sup> (the circuit court) on May 23, 2005, following a jury trial, convicting him of: (1) Assault in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 707-711(1)(d) (1993)<sup>2</sup>; (2) Assault in the Third Degree, in violation of HRS § 707-712 (1993)<sup>3</sup>; and (3) Attempted Assault in

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<sup>1</sup> The Honorable Virginia Lea Crandall presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 707-711(1)(d) (1993) states that "[a] person commits the offense of assault in the second degree if . . . [t]he person intentionally or knowingly causes bodily injury to another person with a dangerous instrument[.]" (Format altered.)

<sup>3</sup> HRS § 707-712 (1993) states:

**Assault in the third degree.** (1) A person commits the offense of assault in the third degree if the person:

(a) Intentionally, knowingly, or recklessly causes

(continued...)

the First Degree, in violation of HRS §§ 707-710 (1993)<sup>4</sup> and 705-500 (1993).<sup>5</sup>

On appeal, Alailefaleula contends that: (1) the circuit court erroneously instructed the jury to consider whether he was guilty of the included offense of Attempted Assault in the First Degree inasmuch as there was no rational basis to acquit him of Assault in the First Degree and convict him of the included offense; and (2) since the jury did not convict him of Assault in the First Degree, he should not, pursuant to State v. Malufau, 80 Hawai'i 126, 906 P.2d 612 (1995),<sup>6</sup> have been placed

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<sup>3</sup> (...continued)

bodily injury to another person; or

(b) Negligently causes bodily injury to another person with a dangerous instrument.

(2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

<sup>4</sup> HRS § 707-710 (1993) states:

**Assault in the first degree.** (1) A person commits the offense of assault in the first degree if the person intentionally or knowingly causes serious bodily injury to another person.

(2) Assault in the first degree is a class B felony.

<sup>5</sup> HRS § 705-500 (1993) states, in relevant part:

**Criminal attempt.** (1) A person is guilty of an attempt to commit a crime if the person:

. . . .

(b) Intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

<sup>6</sup> Defendant-Appellant Leasapai Alailefaleula does not raise any error with respect to his convictions for Assault in the Second Degree and Assault in the Third Degree. Therefore, we affirm the Judgment of the court

(continued...)

in jeopardy of being convicted of Attempted Assault in the First Degree, an included offense of the same class and grade as Assault in the First Degree. State v. Malufau, 80 Hawai'i 126, 906 P.2d 612 (1995).

After carefully reviewing the record on appeal and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties, we disagree with Alailefaleula. We note that the circuit court was required to instruct the jury with respect to the included offense of attempted assault in the first degree, State v. Redulla, 104 Hawai'i 517, 92 P.3d 1027 (App. 2004). Additionally, Malufau is inapplicable to the facts presented by this case. See Malufau, 80 Hawai'i at 138, 906 P.2d at 624.

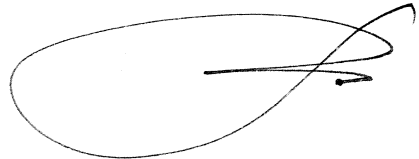
Accordingly, we affirm the Judgments from which this appeal was taken.

DATED: Honolulu, Hawai'i, June 29, 2006.

On the briefs:

Keith S. Shigetomi  
for defendant-appellant.

Sonja P. McCullen,  
deputy prosecuting attorney,  
City and County of Honolulu,  
for plaintiff-appellee.

*James A Burns*  
*Corinne Ka Watanabe*  


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<sup>6</sup> (...continued)  
convicting Alailefaleula of Assault in the Second Degree and Assault in the Third Degree without further discussion.