

NO. 27723

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
KONILETI LATU, Defendant-Appellant

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APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 04-1-0368(1))

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Nakamura and Fujise, JJ.)

Defendant-Appellant Konileti Latu (Latu) appeals from the Judgment filed on December 21, 2005 in the Circuit Court of the Second Circuit^{1/} (circuit court). On July 26, 2004, the State charged Latu via an Indictment with one count of Assault in the Second Degree, in violation of Hawaii Revised Statutes (HRS) § 707-711(1)(a) (1993). The Indictment alleged that on or about April 26, 2003, Latu did intentionally or knowingly cause substantial bodily injury to Sean King (King).

A jury found Latu guilty of the charged offense. The circuit court entered its Judgment on December 21, 2005. Latu filed a Notice of Appeal on January 20, 2006. On appeal, Latu

^{1/} The Honorable Joel E. August presided.

argues that the circuit court erred in admitting hearsay testimony.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude that Etan Krupnick's testimony that persons at the fight gave him Latu's name as King's assailant was hearsay and did not fall within one of the exceptions, and thus the circuit court improperly admitted it into evidence. Hawaii Rules of Evidence Rule 802.1(3); State v. Naeole, 62 Haw. 563, 570, 617 P.2d 820, 826 (1980); State v. Tafokitau, 104 Hawai'i 285, 290, 88 P.3d 657, 662 (App. 2004) (declarant must testify at trial and be subject to cross-examination.). However, such error was harmless beyond a reasonable doubt. Hawai'i Rules of Penal Procedure Rule 52(a); State v. Sprattling, 99 Hawai'i 312, 320, 55 P.3d 276, 284 (2002); State v. Pauline, 100 Hawai'i 356, 378, 60 P.3d 306, 328 (2002); State v. Gano, 92 Hawai'i 161, 176, 988 P.2d 1153, 1168 (1999); Korean Buddhist Dae Won Sa Temple of Hawaii v. Sullivan, 87 Hawai'i 217, 245, 953 P.2d 1315, 1343 (1998); State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998); State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999); State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996).

Therefore,

The Judgment filed on December 21, 2005 in the Circuit Court of the Second Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 24, 2007.

On the briefs:

Joyce K. Matsumori-Hoshijo and
Ian G. Loveseth
for Defendant-Appellant.


Presiding Judge

Peter A. Hanano,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellant.


Associate Judge


Associate Judge