

NO. 23641

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

WILLIAM STEPHENSON, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 00-1-0052)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

The defendant-appellant William Stephenson appeals from the first circuit court's judgment of conviction of and sentence for, inter alia, the offense of assault in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 707-711(1) (a) (1993), filed on July 10, 2000. Stephenson's sole point of error on appeal is that the circuit court erred in failing to instruct the jury regarding an offense included within second degree assault, to wit, assault in the third degree, see HRS § 707-712(1) (a) (1993), for which Stephenson asserts there was a rational basis in the evidence adduced at trial.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that we need not decide whether there was a rational basis in the evidence from which a reasonable juror could acquit Stephenson of second degree assault but, at the same time, convict him of third degree assault. Any hypothetical error on

the part of the circuit court in failing to instruct the jury with respect to third degree assault was harmless beyond a reasonable doubt, inasmuch as the jury convicted Stephenson as charged of second degree assault. See State v. Haanio, 94 Hawai'i 405, 415-16, 16 P.3d 246, 256-57 (2001); State v. Holbron, 80 Hawai'i 27, 47, 904 P.2d 912, 932 (1995). Therefore,

IT IS HEREBY ORDERED that the first circuit court's July 10, 2000 judgment of conviction and sentence from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, May 11, 2001.

On the briefs:

Linda C.R. Jameson (Deputy
Public Defender), for the
defendant-appellant,
William Stephenson

Bryan K. Sano (Deputy
Prosecuting Attorney), for
the plaintiff-appellee,
State of Hawai'i