

NO. 22013

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

HENRY M. VALLENTE, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 97-2343)

SUMMARY DISPOSITION ORDER

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

Following a jury trial before then-first circuit court judge, the Honorable John Lim, defendant-appellant Henry M. Vallente (Defendant) was convicted of attempted assault in the first degree, in violation of Hawai'i Revised Statutes (HRS) §§ 707-710 (1993)¹ and 705-500 (1993)² [Count I] and assault in the

¹ HRS § 707-710 provides in relevant part that "[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 HRS § 705-500 provides as follows:

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

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or

(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

(continued...)

third degree, in violation of HRS § 707-712(1)(a) (1993)³ [Count II]. Defendant appeals his conviction as to Count I. Relying on this court's holding in State v. Arceo, 84 Hawai'i 1, 32-33, 928 P.2d 843, 874-75 (1996), Defendant alleges that the trial court committed plain error by failing to instruct the jury that it must unanimously agree as to whether Defendant was guilty as an accomplice or as a principal.

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: (1) the trial court properly instructed the jury with respect to accomplice liability, see HRS §§ 702-221, -222, and -223 (1993); and (2) Defendant's right to a unanimous verdict under article I, sections 5 and 14 of the Hawai'i Constitution was not violated, see State v. Fukusaku, 85 Hawai'i 462, 489 n.24, 946 P.2d 32, 70 n.24 (1997) (noting that, because the rule

²(...continued)

person's commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

³ HRS § 707-712(1)(a) provides that "[a] person commits the offense of assault in the third degree if the person . . . [i]ntentionally, knowingly, or recklessly causes bodily injury to another person[.]"

articulated in Arceo with respect to separate and distinct culpable acts does not apply to accomplice liability situations, a specific unanimity instruction was not required as to whether the defendant acted as an accomplice or a principal). Therefore,

IT IS HEREBY ORDERED that the judgment from which this appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, May 30, 2001.

On the briefs:

Linda C. R. Jameson,
Deputy Public Defender,
for defendant-appellant

Loren J. Thomas,
Deputy Prosecuting Attorney,
for plaintiff-appellee