

NO. 22594

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

ANITA BRADY, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 97-2003)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Anita Brady appeals from the first circuit court's conviction of and sentence for manslaughter, in violation of Hawai'i Revised Statutes (HRS) § 707-702 (1993 & Supp. 1996). On appeal, Brady contends that the circuit court erred by failing to instruct the jury (1) on murder in the second degree's alleged included offenses of assault in the first and second degrees and (2) that the state of mind element applies to all elements of murder in the second degree and manslaughter.

Upon careful review of the record and briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that because (1) even assuming that (a) assault in the first and second degrees are included offenses of attempted second degree murder and (b) there was a rational basis in the evidence for such instructions, the circuit court's failure to instruct the

jury as to such offenses would be harmless, see State v. Haanio, 94 Hawai'i 405, 415, 16 P.3d 246, 256 (2001) ("[A trial court's erroneous instruction on an included offense] is harmless when the jury convicts the defendant of the charged offense or of an included offense greater than the included offense erroneously omitted from the instructions."); and (2) the circuit court properly instructed the jury that the state of mind element applies to all elements of murder in the second degree and manslaughter; the circuit court's judgment and sentence were proper.

IT IS HEREBY ORDERED that the judgment of conviction and sentence of the circuit court from which the appeal is taken are affirmed.

DATED: Honolulu, Hawai'i, May 22, 2001.

On the briefs:

Joyce K. Matsumori-Hoshijo,
Deputy Public Defender,
for defendant-appellant

Donn Fudo, Deputy
Prosecuting Attorney,
for plaintiff-appellee