

NO. 27079

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
FRANK FRISBEE, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 00-1-1685)

ENRIQUANDO
CLERK APPELLATE COURTS
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Lim and Foley, JJ.)

Frank Frisbee (Defendant) appeals the January 18, 2005 judgment of the Circuit Court of the First Circuit (circuit court)¹ that convicted him, after a jury trial, of two counts of kidnapping, one a violation of Hawaii Revised Statutes (HRS) § 707-720(1)(d) (1993) (Count I), and the other a violation of HRS § 707-720(1)(e) (1993) (count II).²

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we dispose of Defendant's points of error on appeal as follows:

1. The circuit court did not err in failing to *sua sponte* instruct the jury on merger of the two kidnapping counts under HRS § 701-109(1)(e) (1993). State v. Libero, 103 Hawai'i

¹ The Honorable Victoria S. Marks presided.

² Frank Frisbee (Defendant) was also charged with and found guilty by the jury of unauthorized control of a propelled vehicle (Count III), promoting a dangerous drug in the third degree (Count IV), and unlawful possession of drug paraphernalia (Count V). On appeal, Defendant does not challenge his convictions and sentences for those offenses. Accordingly, we affirm that part of the January 18, 2005 judgment, as a matter of course.

490, 501-02, 83 P.3d 753, 764-65 (App. 2003).

2. The circuit court did not err in denying Defendant's post-trial motion to merge the kidnapping counts. State v. Momoki, 98 Hawai'i 188, 194-95, 46 P.3d 1, 7-8 (App. 2002); State v. Matias, 102 Hawai'i 300, 306, 75 P.3d 1191, 1197 (2003); State v. Alston, 75 Haw. 517, 531, 865 P.2d 157, 165 (1994).

Therefore,

IT IS HEREBY ORDERED that the circuit court's January 18, 2005 judgment is affirmed.

DATED: Honolulu, Hawai'i, September 12, 2006.

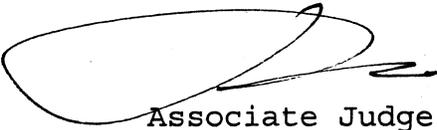
On the briefs:

Richard D. Gronna,
for Defendant-Appellant.

Daniel H. Shimizu,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Corinne K.A. Wataxale

Presiding Judge



Associate Judge

Daniel R. Foley
Associate Judge