

NO. 27616

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MICHAEL W. ATCHISON, Defendant-Appellant

EMERILANBO
COURT, APPELLATE OPINIONS
STATE OF HAWAII

2007 FEB -8 AM 8:00

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Cr. No. 05-1-1770)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Lim, and Fujise, JJ.)

Defendant-Appellant Michael W. Atchison (Atchison)

appeals from the judgment entered by the Circuit Court of the First Circuit¹ on October 20, 2005, convicting and sentencing him for Assault in the Third Degree, in violation of Hawaii Revised Statutes § 707-712(1)(a) (1993).² The charge against Atchison stemmed from an incident in which the complaining witness (CW) was sprayed in the face with pepper spray by an individual who passed the CW on a sidewalk in Waikīkī on the morning of June 19, 2005.

¹ The Honorable Rhonda A. Nishimura presided.

² Hawaii Revised Statutes § 707-712 (1993) provides, in relevant part:

Assault in the third degree. (1) A person commits the offense of assault in the third degree if the person:

(a) Intentionally, knowingly, or recklessly causes bodily injury to another person; . . .

. . . .

(2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

Atchison contends that there was insufficient evidence to sustain his conviction because the two eyewitnesses who identified him were not reliable and the field lineup conducted by the police was impermissibly suggestive.

Upon reviewing the record and the briefs submitted by the parties, and having considered the statutes and case law relevant to the arguments advanced and issues raised by the parties, we disagree. See In re John Doe, 107 Hawai'i 439, 450, 114 P.3d 945, 956 (App. 2005); State v. Okumura, 78 Hawai'i 383, 391, 894 P.2d 80, 88 (1995); State v. DeCenso, 6 Haw. App. 127, 131, 681 P.2d 573, 577-78 (1984).

Accordingly, the judgment from which this appeal was taken is affirmed.

DATED: Honolulu, Hawai'i, February 8, 2007.

On the briefs:

N. Kanale Sadowski,
deputy public defender,
State of Hawai'i,
for defendant-appellant.

Anne K. Clarkin,
deputy prosecuting attorney,
City and County of Honolulu,
for plaintiff-appellee.

