

NO. 28823

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
MILO MOSES, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(Cr. No. 05-1-1620)

SUMMARY DISPOSITION ORDER

(By: Watananbe, Presiding Judge, Foley and Fujise, JJ.)

Defendant-Appellant Milo Moses (Moses) appeals from the October 2, 2007 Judgment entered by the Circuit Court of the First Circuit (circuit court)<sup>1</sup> convicting Moses of Assault in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 707-711(d) (Supp. 2007).

On appeal, based on State v. Arceo, 84 Hawai'i 1, 928 P.2d 843 (1996), Moses contends that the circuit court erred by failing to provide the jury with a specific unanimity instruction regarding the jury's determination "of [the] manner the sharpening stone was used or intended to be used, and if that manner of the sharpening stone's use is known to be capable of producing death or serious bodily injury."

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments advanced by the parties as well as the applicable authority, we resolve Moses' point of error as follows:

The circuit court instructed the jury generally, that its verdict must be unanimous and specifically, that it "must unanimously agree that the same act has been proved beyond a reasonable doubt." As such, it complied with the requirements of Arceo.

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<sup>1</sup> The Honorable Fa'auuga To'oto'o presided.

We note that Moses argues--without authority--for the first time in his reply brief that the circuit court was also required to instruct the jury that it must unanimously agree upon which "result" was caused by his acts. However, appellants are forbidden from raising new matters in their reply briefs, see Hawai'i Rules of Appellate Procedure Rule 28(d), and we decline to address this argument.

Therefore,

IT IS HEREBY ORDERED that the October 2, 2007 Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 10, 2009.

On the briefs:

Joseph R. Mottl, III,  
for Defendant-Appellant.

Presiding Judge

James M. Anderson,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

Associate Judge

Associate Judge