

NO. CAAP-12-0000112

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
FERDINAND MALINAY, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 05-1-0101)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant Ferdinand Malinay (Malinay) appeals from the February 10, 2012 Amended Judgment entered by the Circuit Court of the First Circuit (Circuit Court),¹ convicting him of the included offense of Assault in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-710 (1993) (Count I) and Assault Against a Law Enforcement Officer in the First Degree, in violation of HRS § 707-712.5 (Supp. 2012) (Count II).

On appeal, Malinay contends that the Circuit court erred in convicting him because evidence of Malinay's state of mind relating to his conduct in each offense² was insufficient in

¹ The Honorable Richard K. Perkins presided.

² Malinay argues that insufficient evidence of his state of mind for the conduct element of the two offenses was presented. Malinay does not contest that serious bodily injury in Count I or bodily injury in Count II, occurred.

light of evidence reflecting that Malinay suffered from a major mental illness aggravated by alcohol abuse that day.³

Based on a careful review of the point on appeal, the arguments made, the record, and the applicable authority, we conclude, from the stipulated reports of the mental health examiners and from the witness statements contained in the police reports stipulated into evidence, that (1) there was substantial evidence that Malinay intentionally and knowingly caused serious bodily injury in Count I and bodily injury in Count II, and (2) the affirmative defense that Malinay's conduct stemmed from a mental disease, disorder, or defect excluding responsibility was not supported by a preponderance of the evidence presented. HRS §§ 702-206 (1993), 704-402 (1993), 704-400 (1993), 704-401 (1993); State v. Uyesugi, 100 Hawai'i 442, 456, 60 P.3d 843, 857 (2002); State v. Baxley, 102 Hawai'i 130, 133-34, 73 P.3d 668, 671-72 (2003).

Therefore, the February 10, 2012 Amended Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 28, 2013.

On the briefs:

Venetia K. Carpenter-Asui
for Defendant-Appellant.

Presiding Judge

Brandon H. Ito,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge

³ Any argument raised for the first time in the reply brief will not be considered. See State v. Mark, 123 Hawai'i 205, 230, 231 P.3d 478, 503 (2010); Hawai'i Rules of Appellate Procedure Rule 28(d) ("The reply brief shall be confined to matters presented in the answering brief.").