

cc: K. Jackson, Esq.
R. Kim, Esq.

2015 DEC 16 PM 4:13

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

L. MOCK CHEW, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

STATE OF HAWAII,

CR. NO. 14-1-392K

vs.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER FINDING DEFENDANT
AARON M. NAKAMOTO NOT GUILTY ON
COUNTS I-IV OF THE COMPLAINT FILED
OCTOBER 15, 2014

AARON M. NAKAMOTO,

Defendant.

Trial Dates: October 27, 28, 29 & 30, 2015
Judge: Honorable Ronald Ibarra

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
FINDING DEFENDANT AARON M. NAKAMOTO NOT GUILTY ON
COUNTS I-IV OF THE COMPLAINT FILED OCTOBER 15, 2014

Aaron M. Nakamoto ("Defendant") was charged in the Complaint filed October 15, 2014, with: Count I (C14027303/SK) Attempted Murder in the Second Degree, in violation of Haw. Rev. Stat. § 705-500(1)(b) and 707-701.5; Count II (C140____/SK) Assault in the First Degree, in violation of Haw. Rev. Stat. § 707-710; Count III (C14027321/SK) Assault in the Second Degree, in violation of Haw. Rev. Stat. § 707-711(1)(d); and, Count IV (C14027545/SK) Disorderly Conduct, in violation of Haw. Rev. Stat. § 711-1101(1) and (3), as amended.

This case came on for a non-jury trial before the Honorable Ronald Ibarra, Judge, Circuit Court of the Third Circuit, on October 27, 28, 29, and 30, 2015, with Kauanoë A. Jackson, Esq. Deputy Prosecuting Attorney appearing on behalf of the State of Hawaii, and Robert D. S. Kim, Esq. appearing on behalf of and along with Defendant Aaron M. Nakamoto. Following the bench trial, the Court makes and enters the following findings of fact, conclusions of law, and order.

I hereby certify that this is a full, true and correct copy of the original on file in this office.


Clerk, Third Circuit Court, State of Hawaii

APPLICABLE LAW

I. Defendant Is Presumed Innocent of the Charges Against Him

Under the law the Court must presume the Defendant innocent of the charges against him. This presumption remains with the Defendant throughout the trial of the case, unless and until the prosecution proves the Defendant guilty beyond a reasonable doubt. The presumption of innocence is not a mere slogan but an essential part of the law that is binding upon the Court.

II. Burden of Proof Is on the State to Prove Defendant Guilty Beyond a Reasonable Doubt

The presumption of innocence places upon the prosecution the duty of proving every material element of the offense charged against the Defendant beyond a reasonable doubt. The Court must not find the Defendant guilty upon mere suspicion or upon evidence which only shows that the Defendant is probably guilty. What the law requires before the Defendant can be found guilty is not suspicion, not probabilities, but proof of the Defendant's guilt beyond a reasonable doubt.

A reasonable doubt is any doubt about the Defendant's guilt which arises from the evidence presented or from the lack of evidence and which is based upon reason and common sense. The Court must decide whether there is or is not such a doubt after careful and impartial consideration of the evidence. A doubt which has no basis in the evidence presented, or the lack of evidence, or reasonable inferences therefrom, or a doubt which is based upon imagination, suspicion or mere speculation or guesswork is not a reasonable doubt.

If after consideration of the evidence and the law, the Court has a reasonable doubt of the Defendant's guilt, then the prosecution has not proved the Defendant's guilt beyond a reasonable doubt and the Court must find the Defendant not guilty.

If after consideration of the evidence and the law, the Court does not have a reasonable doubt of the defendant's guilt, then the prosecution has proved the defendant's guilt beyond a reasonable doubt and the Court must find the defendant guilty.

III. Court Must Consider Only the Evidence and Must Weigh All of the Evidence

The Court must consider only the evidence that has been presented in this case and inferences drawn from the evidence which are justified by reason and common sense.

The Complaint is a mere formal accusation, and it is not evidence of the Defendant's guilt.

The Court must not be influenced by pity for the Defendant or by passion or prejudice against the Defendant. Both the prosecution and the Defendant have a right to demand, and they do demand and expect, that the Court will carefully and impartially consider and weigh all of the evidence and follow the law, and that the Court will reach a just verdict.

While the Court must consider all of the evidence in determining the facts in this case, this does not mean that the Court is bound to give every bit of evidence the same weight. The Court is the sole and exclusive judge of the effect and value of the evidence and of the credibility of the witnesses.

IV. Direct and Circumstantial Evidence

There are two types of evidence—direct evidence, such as the testimony of witnesses who assert actual knowledge of a fact, and circumstantial evidence, which permits a reasonable inference of the existence of another fact.

Facts may be proved by direct or circumstantial evidence, or by a combination of both direct evidence and circumstantial evidence.

V. Court Determines Witness Credibility

It is the Court's exclusive right to determine whether and to what extent a witness should be believed and to give weight to his or her testimony accordingly. In evaluating the weight and credibility of a witness's testimony, the Court may consider the witness's appearance and demeanor; the witness's

manner of testifying; the witness's intelligence; the witness's candor or frankness, or lack thereof; the witness's interest, if any, in the result of this case; the witness's relation, if any, to a party; the witness's temper, feeling, or bias, if any has been shown; the witness's means and opportunity of acquiring information; the probability or improbability of the witness's testimony; the extent to which the witness is supported or contradicted by other evidence; the extent to which the witness has made contradictory statements, whether in trial or at other times; and all other circumstances surrounding the witness and bearing upon his or her credibility.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the Court to discredit such testimony. In weighing the effect of inconsistencies or discrepancies, whether they occur within one witness's testimony or as between different witnesses, the Court must consider whether they concern matters of importance or only matters of unimportant detail, and whether they result from innocent error or deliberate falsehood.

If the Court finds that a witness has deliberately testified falsely to any important fact or deliberately exaggerated or suppressed any important fact, then the Court may reject the testimony of that witness except for those parts which the Court nevertheless believes to be true.

VI. Burden Is on the State to Prove Self-Defense Was Not Justified Beyond a Reasonable Doubt

Self-defense is a defense to the charges of Count 1: Attempted Murder in the Second Degree; Count 2: Assault in the First Degree; and Count 3: Assault in the Second Degree. Self-defense involves consideration of two issues. First, whether the Defendant did or did not use "deadly force." Second, whether the force used was justified.

The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the Defendant was not justified. If the prosecution does not meet its burden, then the Court must find the Defendant not guilty.

“Deadly Force” means force which the Defendant uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury.

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Once the Court makes a determination whether Deadly Force was or was not used, the Court must then follow the law to determine whether the force used by the defendant was justified.

The use of deadly force upon or toward another person is justified if the Defendant reasonably believes that deadly force is immediately necessary to protect himself on the present occasion against death or serious bodily injury. The reasonableness of the Defendant's belief that the use of protective deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the Defendant's position under the circumstances of which the Defendant was aware or as the Defendant reasonably believed them to be when the deadly force was use.

The use of deadly force is not justifiable if the Defendant knows that he can avoid the necessity of using such force with complete safety by retreating.

FINDINGS OF FACT

The Court, having judged the credibility of the witness testimony and having reviewed the exhibits admitted, makes the following findings of fact. To the extent that any findings of fact may be considered conclusions of law, they shall be construed as such.

1. The Waikoloa Village shopping center is located in South Kohala, County and State of Hawai'i. Hirayama Testimony, TR 10-27-15, P.M. Sess., p. 53, l. 9-14.

2. The Waikoloa Village shopping center contains a grocery store known as the Waikoloa Village Market, a gas station, a bank, restaurants, a real estate office, and a post office. The shopping center

businesses share one large parking lot. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 34, l. 20-22; p. 35, l. 1-6. Luepkes Testimony, TR 10-28-15, P.M. Sess., p. 20, l. 4-6.

3. Pueo's Osteria is a restaurant located in the Waikoloa Village shopping center. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 4, l. 3-8.

4. Pueo's is located across the parking lot from the grocery store. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 35, l. 13-17.

5. Defendant Aaron Nakamoto is a thirty-five-year-old Waikoloa resident. Defendant is approximately 5 feet 7 inches tall and weighs 145 pounds. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 33, l. 8-11; p. 59, l. 19-21.

6. On October 12, 2014, Defendant got off work at Beach and Kings Golf Course around ten or ten-thirty in the morning and went home. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 34, l. 4-5, 18-25.

7. At home, Defendant had pupus, watched football, and drank a few beers with his friend. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 36, l. 2-3, 20-22.

8. Around five in the afternoon, Defendant left his house and dropped off his daughter at his mother's house in Waikoloa. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 37, l. 16-17, 20-25.

9. Thereafter, Defendant went to Banjy's restaurant in Waikoloa Village where he watched sports and drank a couple of beers. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 38, l. 5; p. 39, l. 6-13, 18-20.

10. After leaving Banjy's, Defendant went to the Waikoloa Village shopping center where he went into Pueo's and had a drink and watched sports on TV. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 40, l. 11-15; p. 41, l. 8-9, 12-14.

11. Hanna Luepkes is a twenty-three-year-old Waikoloa resident. Luepkes is about 5 feet 7 inches tall and weighs 130 pounds. Luepkes Testimony, TR 10-28-15, P.M. Sess., p. 15, l. 15-18; p. 16, 8-13.

12. Luepkes was a wrestler in 2010. She competed, placed second in her division, and made it to the state championships. Luepkes Testimony, TR 10-28-15, P.M. Sess., p. 16, l. 16-19; p. 17, l. 12-20; p. 78, l. 5-10.

13. On the night of October 12, 2014, Luepkes had amphetamine in her system. Luepkes admitted that the night before, she had taken Adderall that she had gotten from a friend. Luepkes does not have a prescription for Adderall. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 55, l. 18-22; p. 56, l. 13-14, 22-24.

14. Carlianne Sugimoto is a twenty-three-year-old Waikoloa resident who resided at Fairway Terrace on October 12, 2014. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 33, l. 19-25; p. 34, l. 13-14.

15. Sugimoto and Luepkes have known each other since grade school and remain close friends. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 34, l. 4, 12. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 16, l. 1-3, 6-7.

16. On October 12, 2014, Sugimoto arrived home around four o'clock after getting off work at the Lava Lava Beach Club. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 36, l. 13-20.

17. Sugimoto then spoke with Luepkes, and the two of them decided to walk to the Waikoloa Village Market to get dinner for Sugimoto's boyfriend. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 36, l. 24-25; p. 37, l. 1-8.

18. Sugimoto had with her a wristlet—a little purse that can be worn on a wrist that can hold credit cards, money, and a cell phone. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 38, l. 10-18.

19. On cross-examination, Sugimoto was asked if her cell phone was in her purse and she responded, "Yes." When asked if she had money, credit cards, ID, and her cell phone in her purse, she responded, "Yes." When asked what kind of cell phone she had, Sugimoto responded, "An iPhone." Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 66, l. 18-24.

20. Later, during Defendant's presentation of evidence, Sugimoto was asked on direct examination "you had your phone in your wristlet, correct?" and Sugimoto testified, "I don't know," and she stated that she may have put her phone "in Hanna's purse." Sugimoto Testimony, TR 10-30-15, A.M. Sess., p. 67, l. 24-25; p. 68, l. 10-11.

21. The Court finds that Sugimoto changed her testimony regarding whether her wristlet contained her phone, that her testimony on October 30, 2015 is not credible, and that her wristlet did contain her iPhone on the evening of October 12, 2014. Findings of Fact ("FOF"), paras. 19-20.

22. Luepkes had a handbag with her. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 23, l. 4-12.

23. When Luepkes and Sugimoto reached the grocery store, they did not go inside. They sat together on the benches outside the grocery store and talked story and caught up. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 39, l. 10-18. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 21, l. 4-12.

24. While talking, Luepkes and Sugimoto decided to go to Pueo's. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 40, l. 2-6. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 23, l. 16-19.

25. Jesse Alinder is a bartender at Pueo's restaurant; Alinder was working on the night of October 12, 2014. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 3, l. 24-25; p. 4, l. 11-12; p. 7, l. 9-11.

26. Pueo's contains a horseshoe-shaped bar where Alinder conducts most of his bar-tending duties. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 6, l. 24-25.

27. When Luepkes and Sugimoto enter Pueo's they sit at one end of the U-shaped bar by the restrooms. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 41, l. 10-18.

28. Alinder took Luepkes and Sugimoto's drink and dinner order. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 42, l. 9-11, 18-21.

29. Sometime after Luepkes and Sugimoto arrived, Defendant entered Pueo's. Exhibit 114.

30. Defendant was seated on the side of the bar just outside the kitchen, across from the seats closest to the restrooms where Luepkes and Sugimoto were seated. Babian Testimony, TR 10-28-15, P.M. Sess., p. 35, l. 3-9.

31. At Pueo's Luepkes and Sugimoto were drinking during dinner. They each had two glasses of wine with a salad and a pasta entrée, which they shared. After they were done eating, they ordered a shot of tequila, which they also shared. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 12, l. 17-20. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 46, l. 10-16.

32. Sancier Demattos is a Waikoloa resident. On the evening of October 12, 2014, she and her boyfriend took her father to Pueo's to celebrate his 85th birthday. Demattos Testimony, TR 10-30-15, P.M. Sess., p. 21, l. 21-24; p. 22, l. 1-7.

33. Demattos and her party sat next to Defendant at the bar, and Demattos's father was engaged in a lively conversation with Defendant throughout the evening. Demattos Testimony, TR 10-30-15, P.M. Sess., p. 24, l. 20-25; p. 25, l. 1-2, 17-25; p. 26, l. 1-3.

34. Demattos and her party first met Defendant when they arrived at Pueo's and did not know him prior to that evening. Demattos Testimony, TR 10-30-15, P.M. Sess., p. 22, l. 21-25; p. 23, l. 1-7.

35. At one point, Alinder's attention was called to Defendant when Defendant's voice became louder than usual. Although Defendant's voice was raised, his voice was not angry; instead he expressed excitement in the manner of a person rooting for a sports team that just scored a touchdown. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 10, l. 18-24.

36. The loud voices that Alinder heard were not only from Defendant; Alinder agreed that everybody was loud. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 19, l. 24-25; p. 20, l. 1-2.

37. Alinder then requested that Defendant keep it down and Defendant complied. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 20, l. 13-17.

38. Luepkes testified that while she and Sugimoto were eating dinner Defendant was “waving his hands and saying, shut the fuck up” at Luepkes and Sugimoto. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 27, l. 10-14.

39. Luepkes stated that Defendant “kept yelling at [them] across the bar.” Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 29, l. 4-7.

40. On cross-examination, when questioned about the hand motions Defendant was making, Luepkes testified, “I don’t know exactly what he was doing,” and “I honestly don’t know. I wasn’t staring at him.” Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 58, l. 16-18; p. 59, l. 18-19.

41. Sugimoto testified that the Defendant was “waving his hands” and was “kind of—telling us to shut up and cut us off” by waving his hand in front of his throat. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 44, l. 10-19.

42. When asked if she heard anything coming from Defendant’s direction, Sugimoto testified, “I don’t know. I don’t really remember if I heard anything.” Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 44, l. 25; p. 45, l. 1.

43. Later Sugimoto was asked, “Do you remember if Mr. Nakamoto was swearing at you guys?” and Sugimoto testified, “Yes. He was saying—yeah.” Sugimoto Testimony, TR 10-30-15, A.M. Sess., p. 74, l. 8-10.

44. Sugimoto and Luepkes believed that Defendant was signaling them from across the bar either verbally and/or by gesturing at them. FOF, paras. 38-43.

45. Alinder did not hear Defendant raise his voice at Luepkes and Sugimoto while they were seated, nor did he see Defendant gesture toward them. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 20. l. 18-25; p. 21, l. 1-5.

46. Demattos also did not observe Defendant waving his hands or hear him yelling or making profanities to people across the bar. Demattos Testimony, TR 10-30-15, P.M. Sess., p. 26, l. 7-15.

47. In light of the vagueness of Luepkas and Sugimoto's testimony regarding Defendant's behavior (FOF, paras. 40-42) and the inconsistencies in their accounts (FOF, paras. 38-43), the Court, applying the law regarding credibility of witnesses, finds that Luepkas and Sugimoto's testimony regarding Defendant's alleged hand gestures and profanities toward them during dinner is not credible.

48. There is no credible evidence that Defendant made gestures toward or uttered profanities at Luepkas and Sugimoto while they were eating dinner. FOF, paras. 45-47.

49. As Luepkas and Sugimoto were leaving Pueo's, Luepkas walked to the opposite side of the bar and went up to the Defendant to tell him that he had ruined their evening. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 47, l. 24-25; p. 48, l. 1. Luepkas Testimony, TR 10-28-2015, A.M. Sess., p. 30, l. 6-9. Exhibit 114.

50. Alinder's attention was called to Defendant a second time when he heard Defendant in an elevated verbal conversation with Luepkas. Alinder Testimony, TR 10-27-15, P.M. Sess., p. 11, l. 20-25.

51. Pueo's owner James Babian was also present in the restaurant on October 12, 2014. Babian Testimony, TR 10-28-15, P.M. Sess., p. 31, l. 20-23; p. 33, l. 16-18.

52. Babian also heard elevated voices and went out from the kitchen to the bar where he observed Defendant raising his voice. Babian Testimony, TR 10-28-15, P.M. Sess., p. 36, l. 1-5.

53. Defendant and Luepkas were involved in an elevated verbal conversation after she approached Defendant, but there is no evidence in the record regarding what was said during this exchange beyond Luepkas's statement to Defendant that he had ruined their evening. FOF, paras. 49-52.

54. When Babian came out, he began talking to the Defendant. At that time Luepkas and Sugimoto left the restaurant. Luepkas Testimony, TR 10-28-15, A.M. Sess., p. 30, l. 18-25.

55. Babian cut the Defendant off [from finishing his beer] and escorted him to the front of the restaurant. Babian Testimony, TR 10-28-15, P.M. Sess., p. 37, l. 7-8, 17-18.

56. Defendant did not understand why he was being cut off and escorted from the restaurant. Babian Testimony, TR 10-28-15, P.M. Sess., p. 37, l. 10-11. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 47, l. 17-18.
57. Defendant was calm and composed while being escorted out. Exhibit 114.
58. Defendant was respectful and followed Babian outside. Babian Testimony, TR 10-28-15, P.M. Sess., p. 37, l. 22-23.
59. While walking outside, Babian had a calm discussion with Defendant regarding his voice level in the restaurant. Babian Testimony, TR 10-28-15, P.M. Sess., p. 38, l. 9-11.
60. Defendant was escorted from Pueo's by Babian because Defendant had raised his voice in the restaurant during his encounter with Luepkes. FOF, paras. 52, 54-59.
61. Once outside, Babian put his hands on Defendant's shoulder and Defendant became upset at being touched. Defendant uttered a profanity at Babian to the effect of: "take your fucking hands off me." Babian Testimony, TR 10-28-15, P.M. Sess., p. 38, l. 19-24. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 66, l. 7-19.
62. Defendant then left Pueo's and went to the Thai kiosk to see if his friend was working there. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 50, l. 1-3.
63. The Thai kiosk is located nearby, across from the entrance to Pueo's restaurant. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 49, l. 9-14.
64. Defendant found out that his friend was not in and then made his way back to his car. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 50, l. 8-9, 13-17.
65. Defendant's vehicle is a dark-blue Nissan Armada. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 59, l. 22-25.
66. Defendant's vehicle was parked by the Filipino store. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 33, l. 20-22.

67. While making his way back to his car, Defendant received a call from his wife who asked him to pick up his daughter. Defendant then returned to his vehicle with the intent to leave to pick up his daughter. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 50, l. 15-17.

68. After leaving Pueo's, Luepkes and Sugimoto went to the Waikoloa Village Market and bought raw steak and mushrooms. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 31, 13-20.

69. While in the store shopping, Luepkes and Sugimoto were talking about what happened at the bar and Sugimoto testified that, "We were kind of offended and upset." Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 50, l. 2-5.

70. On cross-examination, when asked if she and Sugimoto were offended and upset about what happened in the bar, Luepkes testified, "I was offended, not angry," and "No, we didn't let it get to us." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 61, l. 25; 62, l. 1-2, 25; p. 63, l. 1-2.

71. However, Luepkes went on agree that she and Sugimoto went back to Pueo's to confront Defendant because Luepkes "wanted to ask him a question." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 62, l. 6-8.

72. When asked if Luepkes and Sugimoto walked all the way past the gas station when they exited the grocery store, Sugimoto testified, "No." Sugimoto Testimony, TR 10-30-15, A.M. Sess., p. 55, 1-4.

73. After viewing the surveillance video from the grocery store, Sugimoto was again asked if on exiting the store they walked all the way to the gas station and she testified, "Yeah... We walked to the end of the store." Sugimoto Testimony, TR 10-30-15, A.M. Sess., p. 60, 11-14.

74. Upon leaving the store with their purchases, Luepkes and Sugimoto walked all the way to the far end of the grocery store building toward the gas station as if they were leaving the shopping center premises. Shortly after walking past the far end of the grocery store, Luepkes and Sugimoto decide to turn around and go looking for Defendant. Exhibit 116.

75. When asked why she and Luepkes turned around to go all the way back through the shopping center, Sugimoto testified, "To confront him." Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 63, l. 14-17.

76. Sugimoto then testifies, "We wanted to talk to him, yeah." Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 64, l. 1.

77. When Sugimoto was asked what she and Luepkes were talking about as they walked from the grocery store toward the gas station Sugimoto testified, "It could have been anything." Sugimoto Testimony, TR 10-30-15, P.M. Sess., p. 6, l. 1. 24-25; p. 7, l. 1-3.

78. Luepkes and Sugimoto's accounts of their decision to turn around and confront the Defendant are vague as to why they chose to turn around (FOF, para. 77) and their testimony is also inconsistent (FOF, paras. 69-77); therefore, applying the law regarding credibility of witnesses, the Court finds that the Complainants' testimony regarding their stated motives for confronting the Defendant in order to simply talk to him lack credibility.

79. The gas station is completely across the parking lot from where Defendant's car was parked. Hirayama Testimony, TR 10-30-15, A.M. Sess., p. 45, l. 12-15.

80. Luepkes and Sugimoto decided to go out of their way and walk all the way back through the shopping center in order to look for Defendant at Pueo's and eventually get to where the Defendant's vehicle was parked. Sugimoto Testimony, TR 10-30-15, A.M. Sess., p. 64, l. 20-23; P.M. Sess., p. 9, l. 19-21.

81. Luepkes and Sugimoto observed the Defendant as they were walking back through the parking lot, and they could see that Defendant was by his car's driver's side door (which was open) and that he appeared to be getting into his car to leave. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 50, l. 22-25; p. 51, l. 1-3, 19-24. Luepkes Testimony, TR 10-29-2015, A.M. Sess. p. 34, l. 14-17.

82. As Defendant was about to get into his car he heard yelling and footsteps running up behind him. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 51, l. 1.

83. Sugimoto was asked whether Luepkes ran and tried to punch Defendant in the face and Sugimoto testified, "She didn't really run, but she wasn't walking." Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 65, l. 10-12.

84. Sugimoto was asked whether when Luepkes saw Defendant walking to his car, Luepkes "ran across the road to meet up with him." Sugimoto testified, "No." Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 72, l. 14-16.

85. When asked whether at the preliminary hearing under oath on October 20, 2014 Sugimoto remembered testifying that Luepkes "ran all the way up to Mr. Nakamoto," Sugimoto testified, "Okay. Yes." Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 73, l. 11-15.

86. Luepkes testified that Defendant came out from the door jamb area and "starts yelling" and that "We were yelling at each other." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 34, l. 20-24; p. 35, l. 1.

87. On direct examination, Luepkes testified that when Defendant left his door area "He walked a couple steps toward [her] and kind of made [her] flinch." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 35, l. 16-17.

88. Luepkes stated, "[Defendant] came right up to me." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 36, l. 12.

89. On cross-examination, Luepkes was asked if she walked or ran to Defendant's location and she stated, "I walked there, yes." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 70, l. 15-17.

90. When asked, "[Defendant] didn't come to your location? He didn't see you from his car, see you at the Waikoloa Market across the parking lot, and started walking up to you, right?" Luepkes replied, "No." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 70, l. 18-23.

91. Luepkes and Sugimoto's testimony about how Luepkes confronted Defendant after finding him by his car in the parking lot is inconsistent (FOF, paras. 83-90) and the Court, applying the law regarding credibility of witnesses, finds their testimony lacks credibility. The Court further finds that Luepkes approached the Defendant by running to his location. FOF, para. 85.

92. As Luepkes ran across the parking lot to confront Defendant, she dropped her purse. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 78, l. 6-8, 12-13, 18-20.

93. Sugimoto left the purse where it lay and ran to follow after Luepkes. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 78, l. 13-23.

94. It is undisputed that Luepkes threw the first punch. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 73, l. 8-10; p. 36, l. 22-24. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 53, l. 11-12, 19-22.

95. Defendant did not see Luepkes coming; as Defendant was getting into his car, he heard footsteps and yelling behind him, and when he turned toward the noise he was met with a punch to the face. The force of the punch caused Defendant to fall backwards. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 50, l. 25; p. 51, l. 1-8, 14-15.

96. Luepkes's initial punch to Defendant's face was forceful and caused a bilateral fracture to his nose. FOF, paras. 94-95, 143.

97. After he was hit, Defendant could feel blood in his mouth and dripping from his nose. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 52, l. 25; p. 53, l. 1.

98. Because Defendant could feel the blood in his nose and mouth, Defendant believed he had sustained serious injury to his body. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 56, l. 1-4.

99. The parking lot was dark and was lit only by streetlights. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 90, l. 1-3. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 51, l. 24-25.

100. Defendant did not see who had punched him and did not know why the person had punched him. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 51, l. 23-25; p. 52, l. 1-2.

101. Luepk's attack on Defendant was sudden and without justification, and it occurred in a dark parking lot where Defendant could not see who had punched him. FOF, paras. 95, 99-100.

102. After Luepk punched Defendant in the face, Defendant fought back and the two continued to fight. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 53, l. 11-12, 19-21.

103. Defendant and Luepk ended up on the ground. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 52, l. 9-13. Luepk Testimony, TR 10-28-15, A.M. Sess., p. 37, l. 14-15.

104. While on the ground, Luepk felt Defendant hit her in the face hard enough to cause blood to gush down her face. Luepk Testimony, TR 10-28-15, A.M. Sess., p. 38, l. 16-21.

105. This injury to Luepk's face was caused by the knife Defendant used to defend himself during the fight. FOF, para. 123.

106. Luepk did not see the Defendant with a knife. Luepk Testimony, TR 10-28-15, A.M. Sess., p. 44, l. 13.

107. Once Luepk and Defendant were on the ground, Sugimoto intervened in the fight. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 53, l. 23-24.

108. Defendant felt that he was getting hit from behind with something hard, but he could not see who was hitting him. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 52, l. 15-18.

109. From behind, Sugimoto hit Defendant in the face and head with her wristlet, which contained her iPhone. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 55, l. 8-9. Heers Testimony, TR 10-28-15, P.M. Sess., p. 58, l. 19-25. FOF, para. 21.

110. After hearing a commotion in the parking lot by Pueo's, Ty Asselin and Heather Heers, who were present in the shopping center, arrived at the scene and approached the parties engaged in the

affray. Asselin Testimony, TR 10-27-15, P.M. Sess., p. 28, l. 18-20; p. 30, l. 4-6. Heers Testimony, TR 10-28-15, P.M. Sess., p. 49, l. 13-16; p. 51, l. 9-10.

111. Asselin was intoxicated. Asselin Testimony, TR 10-27-15, P.M. Sess., p. 40, l. 18-20.

112. Upon seeing two of the people involved go to the ground, Heers began yelling at the parties to stop fighting. Heers Testimony, TR 10-28-15, P.M. Sess., p. 52, l. 3-8.

113. Defendant was facing Luepkens on the ground, straddling her, and Sugimoto was behind Defendant striking him from the back. Heers Testimony, TR 10-28-15, P.M. Sess., p. 58, l. 11-12; p. 58, l. 19-25.

114. After Heers yelled at the parties to stop, everybody stopped and the parties on the ground began to stand up. Heers Testimony, TR 10-28-15, P.M. Sess., p. 52, l. 15-17. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 55, l. 4-8.

115. Asselin called 911 and reported the fight to the operator. Exhibits 92, 93, 94.

116. During the 911 call, Asselin states, "I'm going to fuckin' bust his ass." Exhibits 92, 93, 94.

117. Asselin also yells at Defendant, "Hey, fuck you, come over here, get me, you pussy, you fuckin' pussy." Asselin Testimony, TR 10-27-15, P.M. Sess., p. 46, l. 25-26; p. 47, l. 1-2. Exhibits 92, 93, 94.

118. Defendant heard the threats made by Asselin and recognized that it was a male voice calling him out. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 53, l. 22-25; p. 54, l. 1-2.

119. During the incident, Defendant believed he was being mobbed by multiple assailants. Defendant knew that at least two people were physically attacking him, but he could hear other people around. As he stood up, Defendant realized there were a total of four people at the scene besides himself. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 53, l. 10-17.

120. During the fight, Defendant was afraid for his life and defended himself. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 53, l. 4-7.

121. The entire incident happened very fast. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 54, l. 21-22; p. 70, l. 3.

122. Defendant had a knife in his pocket, but he does not know if or how the knife was used during the incident. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 54, l. 8-11.

123. Although neither Defendant, Luepkes, nor Sugimoto testified that a knife was used during the affray, the Court finds that Defendant used a knife to defend himself based on his testimony that he possessed a knife in his pocket at the time of the incident, Heers' observation of Defendant holding a knife after the incident, and based on the injuries to Luepkes, Sugimoto, and Defendant, which were consistent with knife wounds. FOF paras. 122, 133, 143-151.

124. Once the fight had broken up, Luepkes and Sugimoto immediately left the scene. Sugimoto Testimony, TR 10-27-15, A.M. Sess., p. 55, l. 21-25. Heers Testimony, TR 10-28-15, P.M. Sess., p. 54, l. 3-8.

125. When Luepkes was questioned regarding whether she and Sugimoto ran from the parking lot because they did not want to get in trouble with the police, Luepkes responded, "That's false." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 69, l. 21-24.

126. When asked whether Luepkes remembered telling Officer Hoopai that she left the area because she did not want to be there when the police arrived, Luepkes responded, "No." Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 76, l. 19-25.

127. During her interview with Officer Hoopai immediately following the incident, Luepkes told Hoopai that she did not want to be at the scene when the police arrived and that she did not want to pursue the matter criminally because she's the one who had started it. Hoopai Testimony, TR 10-30-15, A.M. Sess., p. 36, l. 17-20; p. 38, l. 2-6, 10-14.

128. Luepkes and Sugimoto called Luepkes's boyfriend Lanson Paolo, and he went to meet up with them. Paolo Testimony, TR 10-28-2015, P.M. Sess., p. 15, l. 3; p. 16, l. 13-19.

129. Luepkes did not call the police and did not ask her boyfriend to call the police. Luepkes Testimony, TR 10-28-15, A.M. Sess., p. 72, l. 7-16.

130. Luepkes and Sugimoto fled the scene of the incident immediately without contacting police or waiting for help to arrive because Luepkes had started the fight and was afraid of getting into trouble with the police. The Court, applying the law regarding the credibility of witnesses, finds that Luepkes's denial of this motivation for leaving the scene during cross-examination lacks credibility based on her statements to Officer Hoopai on the night of the incident. FOF paras. 124-129.

131. When Paolo arrived he observed the girls walking by the pro shop at the Waikoloa Golf Course; he saw that they were very bloody. Paolo Testimony, TR 10-28-2015, P.M. Sess., p. 16, l. 20-21; p. 17, l. 4-5.

132. Paolo then took both girls to the hospital. Paolo Testimony, TR 10-28-2015, P.M. Sess., p. 18, l. 3-6.

133. After the Complainants left the scene, Defendant remained standing by his driver's side car door, as if in shock. Heers then observed a knife in the Defendant's left hand which was visible through the car's window. Heers Testimony, TR 10-28-15, P.M. Sess., p. 54, l. 10-11, 17-20, 22-25; p. 55, l. 2-4.

134. Shortly thereafter, Defendant also left the scene and went home. Nakamoto Testimony, TR 10-30-15, P.M. Sess., p. 59, l. 3-4.

135. On October 12, 2014, Officer Kyle Hirayama responded to a call in the Waikoloa Village shopping center with Officers Naki-Brown and Ferreira. Hirayama Testimony, TR 10-27-15, P.M. Sess., p. 53, l. 15-17, 22-23.

136. When the officers arrived at the shopping center, they did not find the male and two females who had been involved in the incident, but Officer Hirayama found out that the person he was looking for was Defendant Aaron Nakamoto. Hirayama Testimony, TR 10-27-15, P.M. Sess., p. 54, l. 8-10, 20-22.

137. Officer Hirayama found Defendant at an address on Kawika Place; Officer Hirayama observed that Defendant appeared to be injured on his thigh area. Hirayama Testimony, TR 10-27-15, P.M. Sess., p. 55, l. 21-22; p. 56, l. 7.

138. Shortly after arriving at the Kawika Place address, Officer Hirayama called for medics. Hirayama Testimony, TR 10-27-15, P.M. Sess., p. 57, l. 10-14.

139. On October 12, 2014, Firefighter-EMT Paul Higgins and paramedic Darren Kaleleiki ("Kalani") responded to a call at Kawika Place where they made contact with Defendant Aaron Nakamoto. Higgins Testimony, TR 10-27-15, P.M. Sess., p. 62, l. 15-16; p. 63, l. 20-24; p. 64, l. 20-22; p. 65, l. 12-17.

140. Higgins and Kalani observed a puncture wound to Defendant's right leg and Defendant was then transported to North Hawaii Hospital. Higgins Testimony, TR 10-27-15, P.M. Sess., p. 67, l. 1-2, 7-13. Kalani Testimony, TR 10-27-15, P.M. Sess., p. 83, l. 15-21; p. 84, l. 15-18.

141. Tracey Banks-Greczanik, M.D. is an emergency room physician who was working at the emergency room on October 12, 2015. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 6, l. 2; p. 7, l. 24-25; p. 8, l. 1.

142. Dr. Banks-Greczanik treated Defendant, Luepkes, and Sugimoto that evening. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 8, l. 2-7; p. 16, l. 21-23.

143. Dr. Banks-Greczanik ascertained that Defendant had bilateral nasal bone fractures and a laceration to his right distal thigh. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 16, l. 24-25; p. 17, l. 1-2.

144. The wound to Defendant's thigh was a combination of both a puncture wound and a laceration. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 34, l. 15-18.

145. Dr. Banks-Greczanik observed a facial laceration on Luepkes that extended from just above her right eye, along the eyelid, out to the top part of her ear. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 11, l. 22-24; p. 12, l. 4-6.

146. The laceration to Luepkes's face was very smooth and was caused by something sharp, like a knife. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 12, l. 25.

147. Dr. Alistair Bairos, general surgeon, also treated Luepkes at the hospital on the night of October 12, 2014. Bairos Testimony, TR 10-30-15, A.M. Sess., p. 6, l. 12-15.

148. Dr. Bairos found sharp-edge injuries to Luepkes's face, neck, and upper back. Bairos Testimony, TR 10-30-15, A.M. Sess., p. 6, l. 21-22.

149. Complainant Sugimoto was also treated for injuries at the emergency room. FOF, para. 142.

150. Sugimoto had a small laceration to her chest wall that was at least a centimeter deep and was a puncture wound. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 13, l. 18-19; p. 14, l. 16-17, 20-21.

151. Sugimoto also had an L-shaped laceration over her left shoulder that was deeper than the skin and into the muscle. Banks-Greczanik Testimony, TR 10-29-15, A.M. Sess., p. 15, l. 6-7, 12-14.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law; to the extent any conclusions of law may be considered findings of fact, they shall be construed as such.

1. The State must prove each element of the offense, the state of mind required for each element of the offense, jurisdiction, venue and the date beyond a reasonable doubt. HRS § 701-114.

2. In Count 1 of the Complaint, the Defendant is charged with Attempted Murder in the Second Degree. A person commits the offense of Attempted Murder in the Second Degree if he intentionally engaged in conduct, which, under the circumstances as he believed them to be, constituted a substantial step in the course of conduct intended or known to cause the death of another person. HRS § 705-500(1)(b).

3. There are two material elements for the charge of Attempted Murder in the Second Degree. Those two elements are:

- a. That on or about October 12, 2014 in Waikoloa, County and State of Hawaii, the Defendant intentionally engaged in conduct; and
- b. That the conduct, under the circumstances as Defendant believed them to be, was a substantial step in a course of conduct intended or known to be practically certain by the Defendant to cause the death of another person.

Conduct shall not be considered a substantial step unless it is strongly corroborative of the Defendant's intent to commit Murder in the Second Degree, which is, intentionally or knowingly causing the death of another person. HRS § 707-701.5.

4. In Count 2 of the Complaint, the Defendant is charged with Assault in the First Degree. A person commits the offense of Assault in the First Degree if he intentionally or knowingly causes serious bodily injury to another person.

5. There are two material elements of the offense of Assault in the First Degree, each of which the prosecution must prove beyond a reasonable doubt. These two elements are:

- a. That on or about October 12, 2014 in Waikoloa, County and State of Hawaii, the Defendant caused serious bodily injury to another person; and
- b. That the Defendant did so intentionally or knowingly.

HRS § 707-710.

6. In Count 3 of the Complaint, Defendant is charged with the Offense of Assault in the Second Degree. A person commits the offense of Assault in the Second Degree if he intentionally or knowingly causes bodily injury to another person with a dangerous instrument.

7. There are three material elements of the offense of Assault in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt. These three elements are:

- a. That on or about October 12, 2014 in Waikoloa, County and State of Hawaii, the Defendant caused bodily injury to another person;
- b. That the Defendant did so with a dangerous instrument; and
- c. That the Defendant did so intentionally or knowingly.

HRS § 707-711(d)(1).

8. Self-defense is a defense to the charges of Count 1: Attempted Murder in the Second Degree; Count 2: Assault in the First Degree; and Count 3: Assault in the Second Degree. HRS § 703-304.

9. Self-defense is not an affirmative defense, and the prosecution has the burden of disproving self-defense beyond a reasonable doubt once evidence of justification has been adduced. *See State v. Culkin*, 97 Haw. 206, 215, 35 P.3d 233, 242 (2001).

10. There was evidence adduced in this case that Defendant defended himself with the use of deadly force. *See FOF*, para. 123.

11. The Court finds that the prosecution has not met its burden to prove that Defendant's use of deadly force in self-protection was not justified beyond a reasonable doubt, and the Court therefore must find the Defendant not guilty of Counts 1, 2, and 3 of the Complaint.

12. "Deadly force" means force which the actor uses with the intent of causing or which the actor knows to create a substantial risk of causing death or serious bodily harm. HRS § 703-300. The Defendant in this case used deadly force by using a knife to defend himself. *FOF*, para. 123.

13. Although neither Defendant, Luepkes, nor Sugimoto testified that a knife was used in the affray, Defendant's admission that he had a knife in his pocket, Heather Heers' observation of Defendant holding a knife after the fight, the nature of the injury Luepkes's face, which Dr. Banks-Greczanik testified was caused by a sharp object, and the existence of other puncture wounds and lacerations on Luepkes, Sugimoto, and the Defendant, are convincing circumstantial evidence to prove that Defendant used a knife to defend himself. FOF, para. 123.

14. The use of a knife constitutes force which Defendant knew created a substantial risk of causing death or serious bodily harm.

15. The use of deadly force is justifiable if the actor believes that deadly force is necessary to protect himself against death or serious bodily injury. HRS § 703-304(2). The reasonableness of the actor's belief that the use of protective deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the actor's position under the circumstances of which the actor was aware or as the actor reasonably believed them to be when the deadly force was used. *See* HRS § 703-304; *State v. Pavao*, 81 Haw. 142, 145, 913 P.2d 553, 556 (Ct. App. 1996).

16. The test for assessing a defendant's self-protection defense has two prongs. *State v. Culkan*, 97 Haw. 206, 215, 35 P.3d 233, 242 (2001).

17. The first prong is subjective; it requires a determination of whether the defendant had the requisite belief that deadly force was necessary to avert death or serious bodily injury. *State v. Lubong*, 77 Hawaii 429, 433, 886 P.2d 766, 770 (1994). "The factfinder is required to place itself in the shoes of the defendant, determine the point of view which the defendant had at the time of the incident, and view the conduct of the victim with all its pertinent sidelights as the defendant was warranted in viewing it." *Id.*

18. The second prong is objective. It requires a determination of whether a reasonably prudent person in the same situation as the defendant would have believed that deadly force was necessary for self-protection. Evaluating the evidence objectively serves the crucial function of providing an external standard. *Id.* at 433, 886 P.2d at 770.

19. “[A] wholly subjective test would result in lawlessness because self-defense would be premised only on the actor’s internal beliefs, the effective of which would be to sanction unreasonable conduct: In essence, self-defense would always justify homicide so long as the defendant was true to his or her own internal beliefs.” *State v. Augustin*, 101 Hawaii 127, 133, 63 P.3d 1097, 1103 (2002)(dissent).

20. “The objective aspect establishes a standard against which the defendant’s beliefs can be measured.” *Augustin* at 134, 63 P.3d at 1104 (dissent). “The objective aspect also keeps self-defense firmly rooted in the narrow concept of necessity.” *Id.* (dissent).

21. The first prong of the test has been satisfied. Defendant believed that deadly force was necessary to protect himself against death or serious bodily injury under the circumstances that Defendant was aware of at the time of the incident on October 12, 2014. Hanna Luepkes was the initial aggressor. FOF, para. 94. Luepkes forcefully punched Defendant in the face, fracturing his nose. FOF, para. 96. Defendant felt blood coming from his nose and going into his mouth, and he believed he had been seriously injured. FOF, paras. 97-98. The incident between Luepkes and Defendant in Pueo’s (to the extent that it was a hostile encounter) was over; the parties had left the restaurant, and in the intervening time Luepkes and Sugimoto went shopping at the grocery store and then walked all the way to the far side of the shopping center before deciding to return to find and confront the Defendant. FOF, paras. 74, 80. Thus, Luepkes’s assault on Defendant was sudden and without warning. FOF, para. 101. Luepkes punched Defendant as he was getting into his vehicle to leave the shopping center. FOF, para. 95. Luepkes’s attack on Defendant occurred in a dark parking lot where he was unable to identify his

assailant. FOF, paras. 99-100. Complainant Sugimoto was also striking Defendant in the head from behind with her wristlet, and Defendant could not see who was striking him. FOF, paras. 108-109, 113. Defendant knew he was being attacked by at least two assailants and could hear other people around him. FOF, para. 119. The entire incident occurred very quickly. FOF, para. 121. Defendant was afraid for his life during the affray. FOF, para. 120.

22. The second prong of the test is also satisfied. From the viewpoint of a reasonably prudent person in the same situation as Defendant, Defendant's fear for his life and his belief that deadly force was necessary to protect himself from death or serious bodily injury was reasonable under the circumstances described above.

23. The use of deadly force is not justifiable if the actor knows that he can avoid the necessity of using such force with complete safety by retreating. HRS § 703-304(5)(b). There is no evidence that Defendant could have retreated in complete safety in light of the fact that Defendant was taken by surprise by Luepkes's attack. FOF, para. 101.

24. Therefore, Defendant's use of deadly force against Complainants Luepkes and Sugimoto in this case was justified.

25. The prosecution has failed to meet its burden to prove that Defendant's use of deadly force was not justified beyond a reasonable doubt.

26. Therefore the Court must find the Defendant not guilty of Counts 1, 2, and 3 of the Complaint.

27. In Count 4 of the Complaint, the Defendant is charged with Disorderly Conduct. A person commits the offense of Disorderly Conduct if he, with the intent to cause physical inconvenience or alarm by a member or members of the public or recklessly creating a risk thereof, makes unreasonable noise and/or subjects another person to offensively coarse behavior or abusive language which was

likely to provoke a violent response; and intended to cause substantial harm or serious inconvenience and/or persisted in such disorderly conduct after reasonable warning or request to desist.

28. The elements of Disorderly conduct are:

- a. Defendant acted with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, and
- b. Defendant made unreasonable noise, and/or
- c. Subjected another person to offensively coarse behavior or abusive language which was likely to provoke a violent response; and
- d. The Defendant did so intending to cause substantial harm or serious inconvenience and/or persisted in such conduct after reasonable warning or request to desist, and
- e. That Defendant's actions occurred on or about October 12, 2014 in Waikoloa, County and State of Hawaii.

HRS § 711-1101(1) and (3).

29. The State has failed to meet its burden as to Count IV of the Complaint for Disorderly Conduct. The testimony of the Complainants regarding Defendant's behavior at Pueo's is not credible. Luepkes and Sugimoto both testified that Defendant was gesturing to them, but their accounts in this regard are inconsistent. FOF, para. 47. Luepkes testified that Defendant was yelling profanities across the bar; Sugimoto first testified that she does not remember hearing Defendant say anything, but later testified that she remembered hearing him swearing. FOF, paras. 38-39, 42-43. The Complainants' testimony is also inconsistent with Alinder and Demattos's testimony, who testified that Defendant did not yell or gesture at Luepkes and Sugimoto. FOF, paras. 45-46. There is therefore no credible evidence that Defendant engaged in offensively coarse behavior or abusive language that was likely to provoke a violent response. FOF, para. 48.

30. There is credible evidence that Defendant made unreasonable noise just prior to being escorted from the bar. FOF, para. 53. Defendant was heard to be engaged in an elevated conversation in the restaurant with Luepkes by both Alinder and Babian. FOF, paras. 50, 52. However, there is no evidence that the Defendant was making noise recklessly or with the intention of causing physical inconvenience or alarm to Luepkes or any member of the public; the record is clear that Luepkes walked over to where Defendant was seated in order to tell him that he ruined their evening, and there was no testimony regarding what Defendant said to Luepkes in response. FOF, paras. 49, 53.

31. The State has therefore failed to prove the material elements of the offense of Disorderly Conduct beyond a reasonable doubt.

ORDER

Based on the above Findings of Fact and Conclusions of Law,
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Court finds Defendant
AARON M. NAKAMOTO:

NOT GUILTY as to Count 1: Attempted Murder in the Second Degree;

NOT GUILTY as to Count 2: Assault in the First Degree;

NOT GUILTY as to Count 3: Assault in the Second Degree; and

NOT GUILTY as to Count 4: Disorderly Conduct.

Bail conditions are cancelled.

Judgment shall issue consistent with this Order.

DEC 16 2015

DATED: Kealahou, Hawaii, _____.

RONALD IBARRA (SEAL)

JUDGE OF THE ABOVE ENTITLED COURT