

NO. 22804

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

RICHARD T. JOAO, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-0268)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Defendant-appellant Richard Joao appeals from the judgment of the circuit court of the first circuit, the Honorable Sandra Simms presiding, convicting him of and sentencing him for theft in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 708-831(1)(b) (Supp. 1998). Joao raises two points on appeal. He asserts that the trial court erred when it: 1) denied his request to obtain all of his complainant's business records and tax returns, as requested by his subpoena duces tecum, and, as a result, prevented Joao from effectively cross-examining and confronting witnesses against him, as guaranteed by the Hawai'i State Constitution, art. 1, §§ 5 and 14; and (2) denied his request for a continuance of trial, which was requested by Joao in response to the prosecution's delayed production of two police reports and Fun Land business records.

Upon careful review of the record and the briefs submitted by the parties, we resolve defendant-appellant's argument as follows: (1) Joao failed to present his first issue on appeal properly because he did not provide the transcript for

the October 16, 1998 hearing, State v. Hoang, 93 Hawai'i 333, 3 P.2d 499 (2000), or a court order in the record on appeal regarding the court's decision to seal Fun Land's tax records, State v. English, 68 Haw. 46, 52, 705 P.2d 12, 16 (1985); cf. Glover v. Grace Pacific Corp., 86 Hawai'i 154, 162, 948 P.2d 575, 583 (App. 1987); and (2) the circuit court did not reversibly err when it denied his request for a continuance of trial, which was requested by Joao in response to the prosecution's production of two police reports and Fun Land business records on the eve of trial, because the documents were requested by the prosecutor and provided to defense counsel two days after Joao disclosed a new trial witness, and Joao failed to demonstrate how he has suffered actual prejudice from the court's decision.

THEREFORE, IT IS HEREBY ORDERED that the trial court's judgment of conviction is affirmed.

DATED: Honolulu, Hawai'i, January 10, 2002.

On the briefs:

Joseph R. Mottl, III
for defendant-appellant

Mangmang Qiu Brown, Deputy
Prosecuting Attorney, for
plaintiff-appellee