

NOT FOR PUBLICATION

NO. 26504

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JOSEPH MISURACA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT,
LIHUE DIVISION
(CR. NO. LC03-454)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Foley and Fujise, JJ.)

Defendant-Appellant Joseph Misuraca (Misuraca) appeals from the Judgment filed on April 14, 2004 in the District Court of the Fifth Circuit, Lihue Division (district court).^{1/}

On July 25, 2003, Misuraca was charged by complaint with Disorderly Conduct, in violation of Hawaii Revised Statutes (HRS) § 711-1101(1)(a) and (b) (Supp. 2005), for engaging in fighting or threatening, or engaging in violent or tumultuous behavior, or for making unreasonable noise on July 1, 2003. By the same complaint, Misuraca was also charged with Harassment, in violation of HRS § 711-1106 (Supp. 2005), for insulting, taunting, or challenging the complaining witness on July 1, 2003.

Misuraca's non-jury trial was held on February 20, 2004. The district court found Misuraca guilty of HRS §§ 711-1101(1)(a) and 711-1106. On March 12, 2004, the district court sentenced Misuraca to 25 hours of community service on the

^{1/} Per diem District Court Judge Joseph Kobayashi presided.

NORMA T. YARA
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Disorderly Conduct conviction and 30 days in jail on the Harassment conviction. The district court stayed the mittimus.

On appeal, Misuraca argues: "I was denied several critical witnesses by Judge Joseph Kobayashi; therefore, I did not have a fair trial." Misuraca's opening brief consists entirely of this one sentence. Misuraca did not designate or order any transcripts (including the trial transcript) as part of the record on appeal.

"[A]ppellant bears the burden to show error by reference to matters in the record, and he . . . has the responsibility of providing the relevant transcript." State v. Hoang, 93 Hawai'i 333, 334, 3 P.3d 499, 500 (2000). "We cannot presume error in the absence of the record." Id. at 336, 3 P.3d at 502 (quoting Oriemon v. Territory of Hawaii, 13 Haw. 413, 415 (1901)).

Therefore,

The Judgment filed on April 14, 2004 in the District Court of the Fifth Circuit, Lihue Division, is affirmed.

DATED: Honolulu, Hawai'i, March 23, 2006.

On the briefs:

Joseph Misuraca,
Defendant-Appellant pro se.

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kaua'i,
for Plaintiff-Appellee.


Acting Chief Judge


Associate Judge


Associate Judge