

## NOT FOR PUBLICATION

NO. 27206

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
DOUGLAS KIMMERLE, Defendant-Appellant

KHAMAKAHO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2006 MAY 15 AM 9:06

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT  
(CR. NO. HC04-209)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Nakamura, JJ.)

Douglas Kimmerle (Defendant) appeals the February 23, 2005 judgment of the District Court of the Fifth Circuit (district court)<sup>1</sup> that convicted him of harassment.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve Defendant's points of error on appeal as follows:

1. The district court did not abuse its discretion in denying Defendant's written and oral motions to dismiss the charge as a *de minimis* infraction. State v. Fukagawa, 100 Hawai'i 498, 503, 60 P.3d 899, 904 (2002).
2. The district court failed to comply with the dictates of Tachibana v. State, 79 Hawai'i 226, 236, 900 P.2d 1293, 1303 (1995), and because the violation of Defendant's constitutional right to testify was not harmless beyond a reasonable doubt, id. at 240, 900 P.2d at 1307, this case must be

<sup>1</sup> The Honorable Frank D. Rothschild presided.

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remanded for a new trial. Cf. State v. Graybeard, 93 Hawai'i 513, 522, 6 P.3d 385, 394 (App. 2000).

3. In light of our disposition of this appeal, we need not reach the other points of error raised by Defendant.

Therefore,

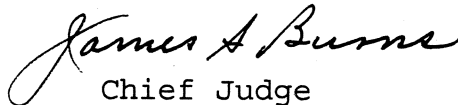
IT IS HEREBY ORDERED that the February 23, 2005 judgment of the district court is vacated and the cause remanded for a new trial.

DATED: Honolulu, Hawai'i, May 15, 2006.

On the briefs:

John C. Bryant, Jr.,  
Catherine H. Remigio  
(Stirling & Kleintop),  
for the Defendant-Appellant.

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

  
Chief Judge

  
Associate Judge

  
Associate Judge