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NO. 28923

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KELLEY CALVERT, Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 JUL 14 AM 8:14

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 07-1-0084)

SUMMARY DISPOSITION ORDER
(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Defendant-Appellant Kelley Calvert (Calvert) appeals from the Judgment of Conviction and Probation Sentence filed on December 4, 2007 in the Circuit Court of the Third Circuit (circuit court).[1] A jury found Calvert guilty of (1) Terroristic Threatening in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 707-715(1) (1993) and 707-716(1)(d) (Supp. 2006); (2) Terroristic Threatening in the Second Degree, in violation of HRS § 707-717 (1993); and (3) Criminal Property Damage in the First Degree, in violation of HRS § 708-820(1)(a) (Supp. 2006) and "Act 181, Section 1, 2006 Legislative Session, H.R.S."

On appeal,[2] Calvert argues that the circuit court "should have granted [Calvert's] Motion for Judgment of Acquittal" and "[t]he actions of [Calvert] should not have

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[1] The Honorable Greg K. Nakamura presided.

[2] Calvert's opening brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(3) in failing to include "[a] concise statement of the case, setting forth the nature of the case, the course and disposition of proceedings in the court . . . appealed from, and the facts material to consideration of the questions and points presented, with record references supporting each statement of fact or mention of court . . . proceedings." Calvert's brief also does not comply with HRAP Rule 28(b)(4) in that each point of error does not state "(ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency." Calvert's counsel is warned that future non-compliance with HRAP 28 may result in sanctions against him.

subjected him to being convicted of Criminal Property Damage in the First Degree."

"The burden is upon appellant in an appeal to show error by reference to matters in the record, and he [or she] has the responsibility of providing an adequate transcript." Bettencourt v. Bettencourt, 80 Hawaii 225, 230, 909 P.2d 553, 558 (1995) (internal quotation marks and citation omitted); Hawaii Rule of Appellate Procedure Rule 10.

The record on appeal before this court does not contain any written testimony. Calvert's counsel failed to order any transcripts of the proceedings for the record on appeal. There is nothing in the record on appeal regarding Calvert's actions. Thus, Calvert has failed to establish any error. State v. Hoang, 93 Hawaii 333, 335-36, 3 P.3d 499, 501-02 (2000).

Therefore,

The Judgment of Conviction and Probation Sentence filed on December 4, 2007 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 14, 2008.

On the briefs:

Vaughan S. Winborne Jr.
for Defendant-Appellant.

Michael S. Kagami,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.

Presiding Judge

Associate Judge

Associate Judge