

NO. 30462

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
FRANCIS MICHAEL MERRIMAN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
LIHUE DIVISION
(CASE NO. 5DTI-09-018508)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Defendant-Appellant Francis Michael Merriman (Merriman) appeals from the Judgment filed on March 10, 2010 in the District Court of the Fifth Circuit, Lihue Division.¹ Merriman was found guilty of Noncompliance with the Speed Limit, in violation of Hawaii Revised Statutes (HRS) §291C-102 (2007), and was assessed fines of \$177.

On appeal, Merriman argues:

The traffic citation 1-HRS 508 291C-102 and 24 was issued on Dec. 22, 2009, stating I was going 39mph in a 15mph zone. The 15mph sign was posted on the electronic speed signs where the police officer was standing. He clocked me at a distance of 360' at 39mph. Check, Google map as marked exhibit #1. Also, Exhibit 2, 3, 4 are photos taken December 23, 2009, in my photo 2, shows cane haul road right lane was still open. The evidence produced by officer, Robert Gausefhol provided by Michael K. Hinazumi, District Construction Engineer is false as to, the sign at the time of the infraction. After the trial DPA Lucas Burns stated this evidence was taken 2-4 days before the trial March 10, 2010. My contention (sic) not stated in the case. Conflicting photo evidence, the officer did not take any photos after the citation.

He perjured himself on the witness stand. The trial decision should be revoked if the appeals court and justice should be served.

¹

The Honorable Trudy K. Senda presided.

We construe Merriman's claim as one of insufficient evidence.

"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 Hawai'i 225, 230, 909 P.2d 553, 558 (1995) (alteration in original) (internal quotation marks omitted) (quoting *Union Bldg. Materials Corp. v. Kakaako Corp.*, 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984)). "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion." Haw. R. App. P. 10(b)(3).

The record on appeal before this court does not contain any written testimony or include a transcript of the proceeding(s) referenced in Merriman's Opening Brief. Merriman failed to order a copy of the necessary transcript(s) for the record on appeal. Consequently, there is nothing in the record on appeal regarding the officer's actions and testimony. Thus, Merriman has failed to establish any error. *State v. Hoang*, 93 Hawaii 333, 335-36, 3 P.3d 499, 501-02 (2000).

Therefore,

The Judgment filed on March 10, 2010 in the District Court of the Fifth Circuit, Lihue Division, is affirmed.

DATED: Honolulu, Hawai'i, March 23, 2011.

On the briefs:

Francis Michael Merriman,
Pro Se Defendant-Appellant.

Presiding Judge

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai,
for Plaintiff-Appellee.

Associate Judge

Associate Judge