

NO. CAAP-15-0000131

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
THEODORICO ERUM, JR., Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT  
(CASE NO. 5DCC-14-0000212)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, and Leonard and Reifurth, JJ.)

Defendant-Appellant Theodorico Erum, Jr., pro se, appeals from the Judgment/Order and Notice of Entry of Judgment/Order ("Judgment") entered by the District Court of the Fifth Circuit ("District Court")<sup>1/</sup> on November 13, 2014.

On November 13, 2014, the State of Hawai'i ("State") filed a Second Amended Complaint charging Erum with two offenses arising out of an incident that occurred on June 1, 2014: Simple Trespass, in violation of Hawaii Revised Statutes ("HRS") § 708-815 (1993), and Harassment, in violation of HRS § 711-1106 (Supp. 2013). A bench trial was held on November 13, 2014. At the conclusion of the trial, the District Court entered the Judgment finding Erum guilty as to both charged offenses, and ordered him to pay fines and a fee totaling \$330.00.

On appeal, Erum alleges that the District Court erred: (1) by failing to enter findings of fact and conclusions of law; (2) in determining whether the complaining witness was the owner of the property on which the trespass allegedly occurred (the

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<sup>1/</sup> The Honorable Joe P. Moss presided.

"Property"); and (3) in denying Erum's motion for a new trial. Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments they advance and the issues they raise, we resolve Erum's points of error as follows, and affirm.

As a preliminary matter, the record does not contain any transcripts of proceedings before the District Court or a request by Erum for transcripts, as required by Hawai'i Rules of Appellate Procedure Rule 10(b).<sup>2/</sup> The Hawai'i Supreme Court has stated that "[t]he 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." *In re RGB*, 123 Hawai'i 1, 27, 229 P.3d 1066, 1092 (2010) (quoting *Bettencourt v. Bettencourt*, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995)). Erum, however, contends that "[i]t [was] plainly unnecessary . . . to file a transcript [in this case] since the record on appeal already shows the facts that are necessary to determine this appeal." (Emphasis omitted.) And because transcripts of trial proceedings are not always necessary on appeal when it is "possible to determine that the court erred without recourse to the transcript," *Thomas-Yukimura v. Yukimura*, 130 Hawai'i 1, 10 n.19, 304 P.3d 1182, 1191 n.19 (2013), we review the merits of Erum's arguments where possible.

(1) Erum's first argument on appeal is that the District Court erred when it did not enter findings of fact or conclusions of law. We disagree.

Erum refers to HRS § 701-114 in support of his argument, but does not explain how that provision, which sets out the burden of proof and the presumption of innocence in criminal

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<sup>2/</sup> The rule states, in relevant part, that

[w]hen an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court appealed from, the appellant shall file with the appellate clerk, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file.

cases,<sup>3/</sup> applies to this case, except to say that no person may be convicted of a criminal offense unless each element and the state of mind required to establish such offense are proved by the prosecutor beyond a reasonable doubt. In other words, Erum does not explain how the District Court's failure to enter findings or conclusions equates with the State's failure to prove every element of the offense or the offender's alleged state of mind, so that argument fails. See generally *Kakinami v. Kakinami*, 127 Hawai'i 126, 144 n.16, 276 P.3d 695, 713 n.16 (2012) (citing *In re Guardianship of Carlsmith*, 113 Hawai'i 236, 246, 151 P.3d 717, 727 (2007) ("noting that this court may 'disregard a particular contention if the appellant makes no discernible argument in support of that position'")).

Moreover, Erum appears to concede that he did not request that the District Court enter findings, as proscribed by Hawai'i Rules of Penal Procedure ("HRPP") Rule 23(c), which provides:

In a case tried without a jury the court shall make a general finding and shall in addition, on request made at the time of the general finding, find such facts specially as are requested by the parties. Such special findings may be orally in open court or in writing at any time prior to sentence.

Haw. R. Penal P. 23(c); cf. *State v. Wells*, 7 Haw. App. 510, 512-13, 780 P.2d 585, 587 (1989) (holding that when a party requests special findings of fact under HRPP Rule 23(c), the trial court

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<sup>3/</sup> Under the statute:

(1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:

- (a) Each element of the offense;
- (b) The state of mind required to establish each element of the offense;
- (c) Facts establishing jurisdiction;
- (d) Facts establishing venue; and
- (e) Facts establishing that the offense was committed within the time period specified in section 701-108.

(2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

Haw. Rev. Stat. § 701-114 (1993).

is required to make those findings). And even without this concession, we observe no evidence of a written request for findings in the record, and we are prevented by the absence of transcripts from confirming whether Erum made any such request orally. Without indication in the record that Erum made an HRPP Rule 23(c) request, then, we must conclude that the District Court did not err by failing to enter findings of fact and conclusions of law. See *State v. Hoang*, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000) (stating that appellate courts "will not presume error from a silent record").

(2) Erum's second argument on appeal is that the District Court erred in determining that the complaining witness ("CW") owned the Property. Specifically, Erum claims that the "issue of ownership of the [P]roperty was disputed and was a matter involved in a related civil case pending in the Hawaii Circuit Court of the Fifth Circuit and in [this court]." Here, however, the record is insufficient to show that an alleged error occurred. *Hoang*, 93 Hawai'i at 336, 3 P.3d at 502 (citing *State v. Apao*, 59 Haw. 625, 638, 586 P.2d 250, 259 (1978), *superceded by statute on other grounds, as recognized in State v. Metcalfe*, 129 Hawai'i 206, 223, 297 P.3d 1062, 1079 (2013)).

As it stands, without a transcript, the record on appeal tells us nothing about the evidence presented, arguments offered, or decisions made in the trial court about who owned the Property. Moreover, the record contains no evidence that the District Court ever ruled in this case that the CW owned the Property.<sup>4/</sup> Absent any factual basis for Erum's allegation that the court "lacked authority to determine whether the complaining witness was the owner of the subject property," then, "this court has no basis upon which to rule on the merits of his claim." *Hoang*, 93 Hawai'i at 336, 3 P.3d at 502 (citing *Apao*, 59 Haw. at 638, 586 P.2d at 259).

Accordingly, we cannot conclude that the District Court

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<sup>4/</sup> Although, logically, the District Court must have at least concluded that Erum was not the Property's owner, because otherwise the court could not have found Erum to be guilty of Simple Trespass. See Haw. Rev. Stat. § 708-815 (requiring the State to prove that an alleged offender "knowingly enter[ed] or remain[ed] unlawfully in or upon [the] premises" in order to secure conviction).

erred in determining that the CW owned the Property, and the second point of error fails.

(3) Erum's third argument on appeal is that the District Court erred when it denied both Erum's motion for a new trial and his motion for a stay of any such new trial pending judgment in a related lawsuit that is currently pending before this court as case number CAAP-14-0000361 (the "Civil Case").<sup>5/</sup> Erum's only argument in support of this contention is that his motions "should [have been] granted in the interests of justice because a final determination of that related lawsuit would provide evidence material to the instant criminal case that would require a judgment of not guilty."

Hawai'i law provides that the trial court "may grant a new trial to the defendant if required in the interest of justice." Haw. R. Penal P. 33. "HRPP Rule 33 is applied when the prior trial resulted in a miscarriage of justice." *State v. Matyas*, 10 Haw. App. 31, 40, 859 P.2d 1380, 1385 (1993) (citing 3 C. Wright, *Federal Practice & Procedure: Criminal* § 551 at 237 (2d ed. 1982)). Motions for new trial are "typically used to correct errors that have occurred in the conduct of the trial or proceedings." *Id.* at 40, 859 P.2d at 1385. "The granting or denial of a motion for new trial is within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *State v. Hicks*, 113 Hawai'i 60, 69, 148 P.3d 493, 502 (2006) (brackets omitted) (quoting *State v. Yamada*, 108 Hawai'i 474, 478, 112 P.3d 254, 258 (2005)) (internal quotation marks omitted). An abuse of discretion occurs if the trial court has "clearly exceeded the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant." *Id.* at 69, 148 P.3d at 502 (brackets omitted) (quoting *Yamada*, 108 Hawai'i at 478, 112 P.3d at 258) (internal quotation marks omitted).

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<sup>5/</sup> In the Civil Case, Erum sued the County of Kaua'i and the CW following the CW's purchase of two of Erum's properties during a foreclosure sale. Erum does not explain how resolution of the Civil Case could have any bearing on his conviction for Harassment, and thus we do not consider the issue further.

Erum, however, offers no basis upon which we might conclude that the District Court abused its discretion by denying his motion for a new trial. Erum knew of the Civil Case, including the trial court's judgments and Erum's own appeal in the case, for almost a year before trial was conducted in this case. In the absence of the trial transcript or a transcript of the hearing on Erum's motion for new trial, we do not know when Erum first apprised the District Court of the issue with the Civil Case. If it was raised at the time of trial, though, it was not new evidence at the time of the motion. If it was not raised until the time of the motion, then it was evidence that could have been raised earlier but was not. In either case, we observe no basis upon which to conclude that the District Court abused its discretion in denying the motion for new trial or for stay pending resolution of the Civil Case.

Without more, we are therefore unable to determine whether the trial court abused its discretion by "clearly exceed[ing] the bounds of reason or disregard[ing] rules or principles of law or practice to the substantial detriment of a party litigant." *Id.* at 69, 148 P.3d at 502 (brackets omitted) (quoting *Yamada*, 108 Hawai'i at 478, 112 P.3d at 258). Thus, we cannot conclude that the District Court abused its discretion when it denied Erum's motion for a new trial.

Therefore, IT IS HEREBY ORDERED that the November 13, 2014 Judgment/Order and Notice of Entry of Judgment/Order entered by the District Court of the Fifth Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 22, 2016.

On the briefs:

Theodorico Erum, Jr.,  
Pro Se Defendant-Appellant.

Presiding Judge

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

Associate Judge

Associate Judge