

NOT FOR PUBLICATION

NO. 26757

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RICHARD JAMES MIANO, Defendant-Appellant

K. HAMAKAOU
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 APR 28 AM 7:47

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD Criminal No. 5623008MO)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Richard James Miano (Miano) appeals from the Judgment filed in the District Court of the First Circuit, Honolulu Division, (district court)^{1/} on July 14, 2004. After a bench trial, the district court convicted Miano of violating Revised Ordinances of Honolulu 1990 (ROH) § 10-1.2(b)(2) (Honolulu, Supp. No. 2, 2-03), which provides:

Sec. 10-1.2 Park rules and regulations.

.....

(b) Except as authorized by permits, and subject to the terms and conditions imposed by the department of parks and recreation, it is unlawful for any person, within the limits of any public park, to:

.....

(2) Sell or offer for sale any services, merchandise, article or thing, whatsoever[.]

^{1/} Per diem District Court Judge Clyde Sumida presided.

The district court fined Miano \$50 and assessed against him a Criminal Injuries Compensation Fund fee of \$25.

On appeal, Miano argues that the district court erred by (1) not relying on an unpublished memorandum opinion he submitted and which, he contends, established the law of the case, and (2) concluding that he had offered or offered to sell anything, in violation of ROH § 10-1.2(b)(2).

Upon careful review of the record and the briefs submitted by the parties, we hold that:

(1) The district court was not required to rely on the unpublished memorandum opinion submitted into evidence by Miano because the opinion did not address the same parties or ordinance involved in the instant case and the opinion concerned a civil case, whereas the instant case is a criminal one. Hawai'i Rules of Appellate Procedure Rule 35(c); Jordan v. Hamada, 64 Haw. 446, 454, 643 P.2d 70, 73 (1982).

(2) The district court did not err when it held that Miano had violated ROH § 10-1.2(b)(2). Miano offered to take photographs of passersby and explained to them that they could later view and purchase the photographs at another location.

Therefore,

IT IS HEREBY ORDERED that the Judgment filed in the District Court of the First Circuit, Honolulu Division, on July 14, 2004 is affirmed.

DATED: Honolulu, Hawai'i, April 28, 2006.

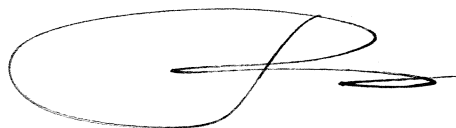
On the briefs:

Sanford Okita,
for Defendant-Appellant.

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Couronne KA Watanabe

Acting Chief Judge



Associate Judge

James R. Foley

Associate Judge