

NO. 23196

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

STEVEN TABAJUNDA, Defendant-Appellant

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APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
(FC-CR. NO. 99-0190 (Hilo))

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,  
Ramil, and Acoba, JJ.)

Defendant-Appellant Steven J. Tabajunda (Tabajunda) appeals from the third circuit family court's January 26, 2000 conviction of and sentence for abuse of a family or household member in violation of Hawai'i Revised Statutes (HRS) section 709-906(1) (Supp. 1999). On appeal, Tabajunda contends his colloquy with the family court at his arraignment and plea hearing was insufficient to establish a knowing and intelligent waiver of his right to a jury trial.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold as follows: Because Tabajunda orally waived his right to trial by jury in open court, he bears the burden of demonstrating by a preponderance of evidence that his oral waiver was not knowing, voluntary, or intelligent. State v. Friedman, 93 Hawai'i 63, 69,

996 P.2d 268, 274 (2000) (citing State v. Ibuos, 75 Haw. 118, 121, 857 P.2d 576, 578 (1993)). Tabajunda's failure to respond to the family court's first inquiry is not a "salient fact" tending to indicate his waiver was unknowing or involuntary, where the family court followed with a second inquiry and the response was unambiguous. Friedman, 93 Hawai'i at 70, 996 P.2d at 275; United States v. Duarte-Higareda, 113 F.3d 1000, 1003 (9th Cir. 1997). Rather, the totality of the circumstances, including the defendant's background, experience and conduct, Friedman, 93 Hawai'i at 70, 996 P.2d at 275 (citation omitted), indicates that Tabajunda knowingly, voluntarily and intelligently waived his right to a jury trial. Therefore,

IT IS HEREBY ORDERED that the family court's judgment of conviction and sentence for abuse of a family or household member is affirmed.

DATED: Honolulu, Hawai'i, February 8, 2001.

On the briefs:

Joyce K. Matsumori-Hoshijo,  
Deputy Public Defender,  
for defendant-appellant

Kimberly B.M. Taniyama,  
Deputy Prosecuting Attorney,  
for plaintiff-appellee