

CAAP-15-000062

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
SUNG SIG HWANG, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-14-00481)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., and Foley and Ginoza, JJ.)

After a bench-trial, the District Court of the First Circuit (District Court)¹ found Defendant-Appellant Sung Sig Hwang (Hwang) guilty of operating a vehicle under the influence of an intoxicant (OVUII). The District Court entered its Judgment on February 4, 2015.

On appeal, Hwang argues that his OVUII conviction must be vacated because the District Court failed to give him the warnings regarding his right to testify that were mandated by the Hawai'i Supreme Court in Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995). We agree.

The record shows that after the prosecution rested, the District Court failed to address the subject of Hwang's right to testify with Hwang and failed to give Hwang the advisements

¹The Honorable David W. Lo presided.

required by Tachibana. Tachibana, 79 Hawai'i at 236 & n.7, 900 P.2d at 1303 & n.7. Hwang did not testify, and we cannot say that the District Court's error in failing to comply with Tachibana was harmless. See State v. Hoang, 94 Hawai'i 271, 279, 12 P.3d 371, 379 (App. 2000).

Accordingly, we vacate the District Court's Judgment and remand the case for a new trial.

DATED: Honolulu, Hawai'i, October 27, 2015.

On the briefs:

Samuel P. King, Jr.
for Defendant-Appellant

Chief Judge

Sonja P. McCullen
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

Associate Judge

Associate Judge