

NO. CAAP-15-0000868

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
CONTANGENT EZRA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Honolulu Division)
(CASE NO. 1DCW-15-0002529)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Foley and Leonard, JJ.)

After a bench trial, the District Court of the First Circuit (District Court)¹ found Defendant-Appellant Contangent Ezra (Ezra) guilty as charged of second-degree criminal trespass, in violation of Hawaii Revised Statutes (HRS) § 708-814(1)(b) (2014). The District Court sentenced Ezra to six months of probation, subject to the condition that he serve three days in jail. The District Court entered its Judgment on October 12, 2015.

On appeal, Ezra contends that his conviction should be vacated because the District Court failed to properly advise him of his right to testify pursuant to Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995), and failed to obtain a valid waiver of his right to testify. We agree.

¹The Honorable Blake T. Okimoto presided.

We conclude that the District Court erred in failing to properly advise Ezra of his rights as required by Tachibana. The District Court failed to advise Ezra that he had a right to testify and that if he wanted to testify, no one could prevent him from doing so. See Tachibana, 79 Hawai'i at 236 n.7, 900 P.2d at 1303 n.7. The record also indicates that English was not Ezra's first language, as he requested and was provided with an interpreter. See State v. Han, 130 Hawai'i 83, 92-93, 306 P.3d 128, 137-38 (2013) (concluding that the defendant's language barrier was a "salient fact" that implicated the importance of proper questioning to confirm that the defendant understood his rights).

Under the circumstances of this case, we conclude that the District Court did not obtain a valid waiver from Ezra of his right to testify. Ezra did not testify and we cannot say that the District Court's Tachibana error was harmless. See State v. Hoang, 94 Hawai'i 271, 279-80, 12 P.3d 371, 379-80 (App. 2000).

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

DATED: Honolulu, Hawai'i, October 27, 2016.

On the briefs:

Jason M. Onishi
Deputy Public Defender
for Defendant-Appellant

Chief Judge

James M. Anderson
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

Associate Judge

Associate Judge