NO. CAAP-14-0000876

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
LISA M. METCALFE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NO. 3DCC-13-0000809)

SUMMARY DISPOSITION ORDER
(By: Nakamura, C.J., Foley and Fujise, JJ.)

Defendant-Appellant, Lisa M. Metcalfe (Metcalfe), appeals from the "Notice of Entry of Judgment and/or Order" (**Judgment**) entered May 13, 2014 in the District Court of the Third Circuit[1] (**district court**).

Among her points on appeal, Metcalfe contends the district court lacked subject matter jurisdiction because she was never properly charged with an offense.

Plaintiff-Appellee State of Hawaiʻi (**State**) concedes error in that the State did not orally arraign Metcalfe in accordance with Hawaiʻi Rules of Penal Procedure, Rules 5(b)(1) and 7(a). The State concedes that Metcalfe did not waive the oral recitation of material facts and agrees that the conviction should be vacated. We also agree. See State v. Nesmith, 127 Hawaiʻi 48, 276 P.3d 617 (2012).

Metcalfe also contends the district court committed plain error in admitting evidence that she possessed marijuana in violation of her rights under Miranda v. Arizona, 384 U.S. 436

[1] The Honorable Joseph P. Florendo, Jr. presided.

(1966). We need not address this issue on appeal because independent of the evidence Metcalfe challenges on Miranda grounds, there was sufficient evidence to show that Metcalfe possessed marijuana, in light of her testimony at trial.

Metcalfe's final contention that the findings of the district court were clearly erroneous is also without merit. There was substantial evidence that the marijuana was being transported for ingestion by the occupants of the motor vehicle and not for medical use. State v. Ildefonso, 72 Haw. 573, 576, 827 P.2d 648, 651 (1992). Because the district court's findings were not clearly erroneous, Metcalfe failed to prove by a preponderance of evidence that the Rule of Lenity would apply to her affirmative defense under Hawaii Revised Statutes § 329-122 (2010 Repl. & Supp 2015) (Medical use of marijuana; conditions of use). State v. Woodhall, 129 Hawaiʻi 397, 409, 301 P.3d 607, 619 (2013).

Therefore,

IT IS HEREBY ORDERED that the "Notice of Entry of Judgment and/or Order" entered May 13, 2014 in the District Court of the Third Circuit is vacated and this case is remanded to the district court for dismissal without prejudice.

DATED: Honolulu, Hawaiʻi, November 15, 2016.

On the briefs:

Reiko A. Bryant
Deputy Public Defender
for Defendant-Appellant.

Jason R. Kwiat
Deputy Prosecuting Attorney
County of Hawaiʻi
for Plaintiff-Appellee.

Chief Judge

Associate Judge

Associate Judge