NO. CAAP-15-0000937

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
SEQUIOA FINE, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-CR. NO. 15-1-1780)

SUMMARY DISPOSITION ORDER
(By: Nakamura, Chief Judge, and Reifurth and Ginoza, JJ.)

Plaintiff-Appellee State of Hawai'i (State) charged Defendant-Appellant Sequioa Fine (Fine) with harassment, in violation of Hawaii Revised Statutes (HRS) § 711-1106(1)(a) (2014).[1/] After a bench trial, the Family Court of the First Circuit (Family Court)[2/] found Fine guilty as charged. Fine appeals from the Family Court's Judgment, which was entered on November 17, 2015.

[1/] HRS § 711-1106 provides in relevant part:

> (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:
>
> (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
>
> . . . .
>
> (2) Harassment is a petty misdemeanor.

[2/] The Honorable Darryl Y.C. Choy presided.

On appeal, Fine contends that his conviction should be vacated and the case remanded for a new trial because the Family Court: (1) failed to properly advise him of his right to testify pursuant to Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995); (2) erred in admitting the complaining witness's written statement; (3) erred in admitting the complaining witness's oral statement; and (4) erred in asking questions of a witness. The State concedes that the Family Court's Tachibana advisement was deficient and that the deficient advisement was not harmless beyond a reasonable doubt.

We conclude that the Family Court erred in failing to properly advise Fine of his rights as required by Tachibana. See Tachibana, 79 Hawai'i at 236 n.7, 900 P.2d at 1303 n.7. Fine did not testify and we cannot say that the Family Court's error was harmless. See State v. Hoang, 94 Hawai'i 271, 279, 12 P.3d 371, 379 (App. 2000). Given our resolution of Fine's Tachibana claim, we need not address the remainder of his points of error on appeal.[3/]

Based on the foregoing, we vacate the Family Court's Judgment, and we remand the case for a new trial.

DATED: Honolulu, Hawai'i, November 25, 2016.

On the briefs:

Sheena M. Crail
Deputy Public Defender
for Defendant-Appellant

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

Craig H. Nakamura
Chief Judge

Lawrence M. Reifurth
Associate Judge

Associate Judge

[3/] Fine did not raise a sufficiency of evidence claim on appeal.