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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
OLIVIA LING, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
KA'U DIVISION
(CASE NO. 3DCW-14-0000428)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellee State of Hawai'i (State) charged Defendant-Appellant Olivia Ling (Ling) with harassment, in violation of Hawaii Revised Statutes (HRS) § 711-1106(1)(a) (2014).^{1/} After a bench trial, the District Court of the Third Circuit (District Court)^{2/} found Ling guilty as charged. The District Court entered its Judgment on February 25, 2015.

On appeal, Ling contends that the District Court erred in: (1) denying her request for a continuance to obtain an

^{1/} HRS § 711-1106(1)(a) provides:

(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/} The Honorable Margaret K. Masunaga presided.

operable DVD player so that a DVD of the charged incident could be introduced and played for the court; (2) admitting other act evidence in violation of Hawaii Rules of Evidence Rule 404(b) (Supp. 2015); and (3) improperly limiting her cross-examination of the complaining witness, in violation of her right to confrontation.

The State concedes error on Ling's first point of error, and we agree with the State's concession. There is no dispute that the DVD of the charged incident constituted relevant and admissible evidence. The State had initially planned to introduce the DVD and play it at trial but refrained from doing so because the DVD player it had brought was inoperable. Prior to resting, Ling moved for a continuance to obtain an operable DVD player so that she could introduce the DVD for consideration by the District Court. The District Court denied the request for a continuance, and it entered its verdict without viewing the DVD. Under these circumstances, we conclude that the District Court abused its discretion in denying Ling's request for a continuance. See State v. Villiarimo, 132 Hawai'i 209, 216-17, 320 P.3d 874, 881-82 (2014).

In light of our resolution of Ling's first point of error, we need not address the other points of error she raises on appeal.

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

DATED: Honolulu, Hawai'i, May 18, 2016.

On the briefs:

Taryn R. Tomasa
Deputy Public Defender
for Defendant-Appellant

Dale Yamada Ross
First Deputy Prosecuting
Attorney
County of Hawai'i
for Plaintiff-Appellee



Chief Judge



Associate Judge



Associate Judge