

NO. 23401

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

SUSAN D. LACEY, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NOS. 99-2434 and 99-2437)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Defendant-appellant Susan D. Lacey appeals from the first circuit court's judgment of conviction on four counts of violating injunction against harassment, in violation of Hawai'i Revised Statutes (HRS) § 604-10.5 (Supp. 1999), of Revetta and Clifford Dunigan. On appeal, Lacey argues that: (1) the trial court erred in denying her motions for judgment of acquittal because the fact that she lived in the same structure as the Dunigans rendered HRS § 604-10.5 unconstitutional as applied to her; and (2) the trial court's failure to instruct the jury that it must acquit her if it found that her verbal contact was for a legitimate purpose, rather than solely for a harassment purpose, was plain error.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we

hold that because: (1) Lacey's conduct was not constitutionally protected; and (2) the trial court's "choice of evils" instruction was effectively equivalent to her proposed "legitimate purpose" instruction, the circuit court's judgment and sentence were proper. Therefore,

IT IS HEREBY ORDERED that the judgment of conviction and probation sentence, filed on April 3, 2000, from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, March 6, 2001.

On the briefs:

Mary Ann Barnard
for Defendant-Appellant
Susan D. Lacey

Bryan K. Sano, Deputy
Prosecuting Attorney,
for Plaintiff-Appellee
State of Hawai'i