

NO. 22480

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CASE NO. CTR 4 & 5: 3/23/99

STATE OF HAWAI'I, Plaintiff-Appellee, v.
SOLOMON KONG, Defendant-Appellant

and

CASE NO. CTR 2: 3/23/99

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHERYL KONG, Defendant-Appellant

and

CASE NO. CTR 3: 3/23/99

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DOROTHY KONG, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
MOLOKA'I DIVISION

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Lim, JJ.)

In this appeal, Defendants-Appellants Solomon Kong (Solomon), Cheryl Kong (Cheryl), and Dorothy Kong (Dorothy) (collectively, the Kongs) appeal from separate judgments entered by the District Court of the Second Circuit, Moloka'i Division (the district court) on March 23, 1999, convicting and sentencing each Kong for criminal trespass in the first degree, a violation of Hawai'i Revised Statutes (HRS) § 708-813(1) (1993). Solomon also appeals from a May 23, 1999 judgment, convicting and

sentencing him for obstructing government operations, in violation of HRS § 710-1010(1) (1993).

The Kongs contend that: (1) the district court reversibly erred by failing to advise Solomon and Cheryl of their constitutional right to testify and by failing to obtain on-the-record waivers of that right, as required by Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1985); (2) there was insufficient evidence to prove beyond a reasonable doubt that Dorothy was guilty of criminal trespass in the first degree; and (3) the district court reversibly erred when it failed to offer Cheryl and Dorothy their due process right of allocution prior to being sentenced.

The State has conceded, and we agree, with the Kongs' first and third points of error. Upon careful review of the record and briefs submitted by the parties and duly considering and analyzing the relevant statutory and case law, however, we conclude that there is no merit to the Kongs' second point on appeal.

Accordingly, we: (1) vacate the March 23, 1999 judgments convicting and sentencing Solomon and Cheryl and remand their cases for a new trial; (2) affirm that part of the March 23, 1999 judgment that convicted Dorothy of criminal

trespass in the first degree; and (3) vacate that part of the March 23, 1999 judgment that sentenced Dorothy for criminal trespass in the first degree, and remand for re-sentencing before a different judge.

DATED: Honolulu, Hawai'i, July 27, 2000.

On the briefs:

Jock M. Yamaguchi
for defendants-appellants.

Richard K. Minatoya,
Deputy Prosecuting Attorney,
County of Maui, for
plaintiff-appellee.