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NO. 26230

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

ERIC ALEXANDER HARTMANN aka ERIC ALEX McNEIL,  
Defendant-Appellant.

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APPEAL FROM THE SECOND CIRCUIT COURT  
(CR. NO. 03-1-0208(1))

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Eric Alexander Hartmann aka Eric Alex McNeil appeals from the November 12, 2003 judgment of conviction and sentence of the Circuit Court of the Second Circuit, the Honorable Joel E. August presiding, resulting from a jury verdict finding Hartmann guilty of forgery in the second degree, in violation of Hawai'i Revised Statutes (HRS) § 708-852(1) (Supp. 2003) [hereinafter, the forgery charge] and attempted theft in the second degree, in violation of HRS §§ 705-500 and 708-831(1)(b) (1993 and Supp. 2003) [hereinafter, the attempted theft charge]. On appeal, Hartmann alleges:

(1) the prosecution failed to adduce sufficient evidence to support either of the charged offenses; (2) the alleged conduct supporting the attempted theft charge constituted a de minimis infraction; (3) conviction of forgery in the second degree and

attempted theft in the second degree violated HRS § 701-109(1) (1993); (4) the jury instructions in the instant case were insufficient, erroneous, or misleading; (5) the trial court denied Hartmann of his right of confrontation; and (6) Hartmann's trial counsel was ineffective.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented, we hold that: (1) the prosecution adduced sufficient evidence to support both the forgery and attempted theft charges;<sup>1</sup> (2) Hartman waived his argument that the attempted theft charge constituted a de minimis infraction, see Moses, 105 Hawai'i at 456, 77 P.3d at 947; (3) Hartmann's convictions of both charges did not violate HRS § 701-109 (1) (1993), see State v. Matias, 102 Hawai'i 300, 305, 75 P.3d 1191, 1196 (2003), State v. Richie, 88 Hawai'i 19, 34, 960 P.2d 1227, 1242 (1998), State v. Arceo, 84 Hawai'i 1, 18-19, 928 P.2d 843, 860-61 (1996), State v. Freeman, 70 Haw. 434, 438-39, 774 P.2d 888, 891-92 (1989); (4) Hartmann fails to demonstrate that the challenged jury instructions were prejudicially erroneous, insufficient, or misleading, see State v. Shinyama, 101 Hawai'i 389, 99, 69 P.3d 517, 527 (2003); State v. Locquiao, 100 Hawai'i 195, 208, 58 P.3d 1242, 1255 (2002); HRS §§ 702-218, 708-850, 708-852, 702-205, 702-207, 705-500 (1993); (5) the trial court did not violate Hartmann's right to

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<sup>1</sup> Additionally, we deem Hartmann's argument regarding Hawai'i Rules of Evidence Rule 303 waived on appeal. See State v. Moses, 105 Hawai'i 449, 456, 77 P.3d 940, 947 (2003)

confrontation, see State v. Apilando, 79 Hawai'i 128, 131, 900 P.2d 135, 138 (1995); and (6) Hartmann fails to establish that his counsel was ineffective, see Barnett v. State, 91 Hawai'i 20, 27, 979 P.2d 1046, 1053 (1999); State v. Fukusaku 85 Hawai'i 462, 481, 946 P.2d 32, 51 (1997). Accordingly,

IT IS HEREBY ORDERED that the circuit court's November 12, 2003 judgment of conviction and sentence is affirmed.

DATED: Honolulu, Hawai'i, February 16, 2005.

On the briefs:

Matthew S. Kohm,  
for defendant-appellant

Arleen Y. Watanabe,  
Deputy Prosecuting Attorney,  
for plaintiff-appellee