

NO. 23473

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
DEWITT LONG, aka LAMAR LONG DEWITT, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Cr. No. 99-0892)

SUMMARY DISPOSITION ORDER

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

The sole issue raised by Defendant-Appellant Dewitt Long, also known as Lamar Long Dewitt, (Long) in this appeal is that the Circuit Court of the First Circuit (the circuit court), the Honorable Russell Blair presiding, erred in allowing Shirley Brown (Brown), a criminalist with the Honolulu Police Department, to testify that a substance that Long was charged with possessing was cocaine.

The trial transcripts reveal that Plaintiff-Appellee State of Hawaii established Brown's expertise and the proper chain of custody for the substance tested by Brown. Brown explained, without objection by defense counsel, the procedures she followed for conducting three tests she ran on the substance. She also testified that the fourier transform infrared (FTIR) spectrometer, which was used to conduct the final test, is generally accepted in the scientific community as an accurate scientific device for determining the presence of cocaine.

Additionally, she explained that: the FTIR spectrometer measures the infrared wavelengths of a chemical substance and produces a graph of that substance; every substance has a distinctive molecular stamp or footprint, which is reflected in the graph; cocaine has a particularly distinctive form of graph; and the graph of the substance she tested was representative of cocaine. Only after Brown testified that she found the substance she tested "to contain cocaine" did defense counsel object, on the general grounds of "insufficient foundation." Defense counsel neither explained what foundational elements were insufficient, nor objected to further testimony by Brown.

In his opening brief, Long, relying on State v. Wallace, 80 Hawai'i 382, 910 P.2d 695 (1996), argues that foundation for Brown's testimony was lacking because "there was no testimony concerning the maintenance and calibration of the FTIR machine prior to its use." However, Wallace involved the proper foundation for an electronic balance used to weigh drugs, not an FTIR spectrometer to determine what a substance contained. Accordingly, Wallace is not dispositive of this case.

Based on the foregoing discussion, and after carefully reviewing the record and the briefs submitted by the parties and duly considering and analyzing the law relevant to the argument raised by Long, we affirm the Judgment entered by the circuit court on April 27, 2000, convicting and sentencing Long for the offenses of Theft in the Second Degree, a violation of Hawai'i

Revised Statutes (HRS) § 708-831(1)(a) (1993 & Supp. 2001), and Promoting a Dangerous Drug in the Third Degree, a violation of HRS § 712-1243 (1993 & Supp. 2001).

DATED: Honolulu, Hawai'i, March 14, 2002.

On the briefs:

Joseph R. Mottl for
defendant-appellant.

Bryan K. Sano, Deputy
Prosecuting Attorney, City
and County of Honolulu,
for plaintiff-appellee.