NO. 23632

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
PAUL MANUEL, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 99-0435)

MEMORANDUM OPINION
(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Paul Manuel (Manuel) appeals the July 26, 2000 judgment of the circuit court of the second circuit[1/] that convicted him, upon a jury's verdict, of the felony offense of theft in the second degree, in violation of Hawaii Revised Statutes (HRS) § 708-831(1)(b) (Supp. 2001),[2/] and sentenced him to five years of probation upon terms and conditions, including seventy-five days in jail and fifty hours of community service. We affirm.

I. Background.

On September 10, 1999, the grand jury found a true

[1/] The Honorable Artemio C. Baxa, judge presiding.

[2/] Hawaii Revised Statutes (HRS) § 708-831(1)(b) (Supp. 2001) provides that "[a] person commits the offense of theft in the second degree if the person commits theft: Of property or services the value of which exceeds $300[.]" (Enumeration omitted.) HRS § 708-830(1) provides that "[a] person commits theft if the person does any of the following: (1) Obtains or exerts unauthorized control over property. A person obtains, or exerts control over, the property of another with intent to deprive the other of the property."

bill, and the indictment was filed on September 13, 1999:

> That on or about the 28th day of August, 1998, in the County of Maui, State of Hawaii, DARYL L. JOHNSON, JR., and PAUL MANUEL, did, with the intent to deprive, obtain or exert unauthorized control over the property of Molokai Ranch, Ltd., to wit, United States currency, the value of which property exceeded Three Hundred Dollars ($300.00), thereby committing the offense of Theft in the Second Degree in violation of Section 708-831(1)(b) of the Hawaii Revised Statutes.

Manuel's jury trial commenced on May 15, 2000. Evidence presented at the trial revealed the following.

On August 27, 1998, Manuel was employed by a contract security outfit, assigned to patrol the premises of Molokaʻi Ranch at Maunaloa town. Manuel's shift that day ended at midnight, at which time his duties would be assumed by his friend, fellow security guard and co-defendant Daryl L. Johnson, Jr. (Johnson).[3/] Manuel saw Johnson at the security office for the change of the guard at around 11:45 p.m., and decided to accompany Johnson on his shift.

About one hour into Johnson's shift, the pair entered the Molokaʻi Ranch office building in search of food. Johnson testified that he briefly parted from Manuel to ensure the door at the end of the hallway was locked, and to use the restroom. When Johnson returned, he found that Manuel had made his way to

---

[3/] On January 20, 2000, pursuant to a plea agreement with the State, co-defendant Daryl L. Johnson, Jr. (Johnson) entered a deferred acceptance of no contest plea to theft in the second degree for his involvement in the incidents of August 28, 1998, in exchange for, *inter alia*, his truthful trial testimony against Defendant-Appellant Paul Manuel (Manuel). At some undisclosed date before Manuel's jury trial commenced, the court deferred acceptance of Johnson's plea for five years upon terms and conditions, including community service.

the accounting office and was in the process of pulling a stack of money out of a gray cash box. Johnson was "[n]ot sure of the exact amount" of the stack of money. The box had been contained in a cabinet[4/] behind a desk. Johnson had not previously known the cash box was there.

When Manuel noticed Johnson, Manuel said, "[L]ook, Daryl, money." Johnson admitted that he "gave into temptation" and decided to grab a stack of money for himself. Johnson remembered there was "a lot more cash money and some coins on the top" left in the cash box after the pair had taken their shares. Manuel then placed the box back in the cabinet. The duo left the office building and drove back to the security office. There, Manuel sat in his personal vehicle and counted the money he had stolen. Johnson did the same "outside of [Manuel's] Bronco[.]" When asked how much money he had counted, Johnson replied, "I believe one hundred five dollars." Johnson also testified, "I believe [Manuel] said he had eighty-five dollars." Johnson did not actually see Manuel count his loot, because Johnson was counting his at the time. In a September 13, 1998 statement he made to the police, Manuel claimed he took $85.00. Johnson

---

[4/] Alyne Kikukawa (Kikukawa), the accounting assistant for Moloka'i Ranch, testified that it was her practice to keep the cash box in a locked cabinet during the business day and to place it in the office safe before leaving for the evening. At the close of business on August 27, 1998 (the afternoon before the theft occurred), Kikukawa unlocked the cabinet but was interrupted by a co-worker before she could return the cash box to the safe. Thus, the cash box failed to find its way back to the safe that evening and instead remained in the unlocked cabinet.

remembered that as Manuel went home with his booty, Manuel told Johnson, "Don't worry, Daryl. We won't get caught[.]"

Johnson was more ambivalent about whether he and Manuel would be caught and decided to return to the Moloka'i Ranch office in order to better conceal their larceny. There, Johnson did his best to wipe off all possible fingerprints they might have left. Johnson decided on his second return visit that he could best conceal their crime by taking the cash box itself. During the remainder of his shift that morning, Johnson returned to the scene about four or five times.

Later that same day, following his shift, Johnson came upon Manuel by "chance" at the Kaunakakai gym. Johnson told Manuel that he had returned to the scene and had taken the cash box with the remaining money. According to Manuel's statement to the police, Johnson also proclaimed that he would give Manuel half the remaining money. At this point, Manuel asked Johnson the amount of the remaining money. Johnson replied that it was about $500.00.

On cross-examination, Johnson acknowledged that Manuel had no knowledge of the second taking until their encounter at the gym. Johnson also admitted that, before their "chance" meeting at the gym, he had harbored no intention of telling Manuel that he had returned to the scene that morning or that he had taken the rest of the money. However, on redirect examination, Johnson testified that he gave Manuel half the money

taken the second time because he thought Manuel was entitled to it.

On August 31, 1998, Johnson handed Manuel an envelope and asked, "[A]re you ready for XMAS[?]" The envelope contained $255.00. Manuel took the envelope home and placed the newly-obtained $255.00 with the money he had initially taken. Manuel told the police that later, "he . . . felt guilty, so he took $10 for gas money, and [the] rest he burned in his backyard."

At some point before September 13, 1998, Johnson "voluntarily turned [himself] into the police" and confessed to his involvement in the events of August 28, 1998. At that point, the police had not identified any suspects. Johnson's confession, which implicated Manuel in the crime, differed markedly from his testimony at trial. On cross-examination, Johnson admitted he told the police that when he first discovered Manuel with the currency in his hands, he asked Manuel "what he was doing in the office and where he got the money." Johnson recalled telling the police that Manuel took all of the money at that time and left only the receipts in the cash box. He also told the police that he demanded Manuel put the money back, but Manuel refused and threatened to place the blame on him if he told anyone about the theft. Finally, Johnson remembered confessing that Manuel decided to split the money with him. Johnson admitted on cross-examination that these confessions were false. Johnson maintained, however, that he was telling the

truth when he told the police that he went back after Manuel had left to "clean up any evidence that could have remained inside." Johnson also remembered telling the police that he spent about $100.00 of the money he stole, then took the rest of the cash along with the box with the receipts inside and disposed of it all at the Molokaʻi public landfill.

Soon after Johnson was arrested, he talked to his grandfather about the incident. After his grandfather talked to the police, his grandfather went to the bank and had a cashier's check for $900.00 issued. Johnson took it to the Molokaʻi Ranch office and there apologized for his involvement in the heist.

On September 13, 1998, Manuel was interviewed by the police. At first, he blamed Johnson for the theft. He denied taking any money. However, he soon changed his story and wrote a statement. In his statement, Manuel wrote that when he and Johnson entered the office in their quest for food, he came across the cash box. Manuel continued:

> I gave [Johnson] a set of $5's and I took [a] set and then we left got in the car [Johnson] was counting his and told me it was $105.00 so then I got home and counted mine the very next day I was meeting [Johnson] at the [gym] I told [Johnson] I had $85.00 then [Johnson] told me he took the whole box and he was going to give me half, then I ask him how much had inside the box then [Johnson] said that [there] was $500.00 in dollar bills and 2 pack of quarters and some other coins.

Later, Manuel wrote, he accepted $255.00 from Johnson.

Alyne Kikukawa (Kikukawa), the accounting assistant for Molokaʻi Ranch, estimated that the company suffered an overall

loss of between $900.00 and $930.00 in the incident.[5/] Kikukawa maintained a daily cash ledger of petty cash disbursements on her computer. Her estimate of loss was based on the daily cash ledger from "[t]he day before the box was taken." Despite her use of the ledger, Kikukawa conceded her inability to provide an exact loss amount, because disbursement receipts for the day of the theft were in the box when it was stolen and she had no access to the ledger at the time of trial. The total of the monies Manuel ($85.00) and Johnson ($105.00 + $500.00) admitted taking did not match Kikukawa's estimate.

After the State rested, Manuel moved to dismiss the indictment, asserting that while Manuel stole $85.00 during the first taking and was arguably also responsible for the $105.00 Johnson stole at the same time, Manuel did not participate in or know of, and thus could not be held responsible for, Johnson's second taking of $500.00, Manuel's subsequent acceptance of about half of that amount notwithstanding. Hence, Manuel argued, the State could not cross the monetary threshold ($300.00) for a charge of theft in the second degree and the indictment must be dismissed. Anticipating this argument, the State had filed a trial memorandum, asserting that the first and second takings

---

[5/] The bank limit of the cash box was $1,500.00. Moloka'i Ranch used this box to allow employees reimbursement for personal monies expended on behalf of the company. When an employee purchased an item in this fashion, he or she provided Kikukawa with a receipt. In return, Kikukawa reimbursed the employee with cash from the box and placed the receipt in the box to reflect the cash disbursed. An accounting of the cash and paid receipts in the box should have added up to a total of $1,500.00 at any given time.

could be aggregated under HRS § 708-806(6) (Supp. 2001).[6/] Treating Manuel's motion to dismiss as a motion for judgment of acquittal, the court denied it. Thereupon, Manuel rested without presenting a case and renewed his motion, which was again denied. On May 18, 2000, the jury found Manuel guilty as charged.

II. Discussion.

A. The Motions for Judgment of Acquittal.

Manuel first asserts that the court erred in denying the motion to dismiss he brought immediately after the State's opening statement,[7/] because the account of the crime proffered by the State in its opening statement led to the inescapable conclusion that the prosecution for theft in the second degree must fail. Manuel's counsel argued this motion as follows:

> Mr. Manuel's [September 13, 1998 statement to the police], which now has been credited by the prosecution as the accurate statement, was that he took, as [the prosecutor] stated in opening statement, that the evidence is going to show that my client took eighty-five dollars, that Mr. Johnson took one hundred five dollars and that totals one hundred ninety dollars, if my math off the top of my head is correct.
>
> Subsequently, that night after Mr. Manuel went home, Mr. Johnson went back on his own and took the rest of the money in the cash box, which again is consistent with the prior statement of my client, and which directly contradicts the statement [Johnson made to the police] and the evidence that went before the grand jury.
>
> Now, that's the case, completely separate. It

[6/] HRS § 708-801(6) (Supp. 2001) provides that "[a]mounts involved in thefts committed pursuant to one scheme or course of conduct, whether the property taken be of one person or several persons, may be aggregated in determining the class or grade of the offense."

[7/] We construe and consider the motion to dismiss Manuel brought immediately after the State's opening statement as a motion for judgment of acquittal.

> was two thefts here. My client had nothing to do with that second theft of the rest of the money, so the theft which my client has been charged with we can now establish -- and the Government is not going to disagree because of their opening statement that the total amount if my client is attributed with both thefts is eighty-five dollars and one hundred five dollars, about two hundred dollars. That's a theft three, not a theft two.

Similarly, with respect to the two motions for judgment of acquittal Manuel brought during the trial -- the first after the close of the State's case and the second at the close of all evidence, Manuel argues on appeal that

> the evidence demonstrated that there was an interruption in [Manuel's] conduct and an interruption in his intent. He left the scene of the crime, went home and knew nothing of the second theft until later that afternoon when Johnson informed [Manuel] of Johnson's theft of the remaining money. Johnson, consistently maintained that [Manuel] had not participated in the entry to the office when Johnson took the cash box and the remaining money.

Opening Brief at 25.

With respect to the motion for judgment of acquittal Manuel made immediately after the State's opening statement, it is well-settled that "a motion for judgment acquittal at the close of the prosecutor's opening statement is rarely made and rarely granted." State v. Simpson, 64 Haw. 363, 368, 641 P.2d 320, 323 (1982). Such a motion should be granted only where the following standard is met:

> If at an earlier stage basic facts appear inescapably leading to the conclusion that, irrespective of whatever other evidence may be introduced, the prosecution must fail. In that event, it is proper to stop the further introduction of evidence and entertain a motion for judgment of acquittal. In other words, this power should be exercised only when it clearly and affirmatively appears from the opening statement that the charge against the defendant cannot

> be sustained under any view of the evidence consistent with the statement.

Id. at 368, 641 P.2d at 323-24 (footnotes, brackets, citations and internal quotation marks and block quote format omitted).

That standard was not met in this case. It is true that, in his opening statement, the prosecutor offered the jury a version of the events consistent with Johnson's testimony at trial and Manuel's September 13, 1998 statement to the police, and inconsistent with Johnson's statement to the police. And it is also true that the prosecutor told the jury that "what [Johnson] told the police was not exactly truthful at that time." But this does not mean that the State's aggregation theory, based on HRS § 708-806(6), should have been dismissed out of hand by the court on Manuel's motion. Whether the monies were taken in "one scheme or course of conduct," and hence, could be aggregated under HRS § 708-806(6), was a question of fact for the jury, not the court. Cf. State v. Hoey, 77 Hawai'i 17, 38, 881 P.2d 504, 525 (1994) ("the question whether [defendant's] kidnapping offense merged into the robbery pursuant to HRS § 701-109(1)(e)[8/] is one of fact that should have been submitted to the jury" (footnote supplied; citation and original footnote omitted));

[8/] HRS § 701-109(1)(e) (1993) provides that "[w]hen the same conduct of a defendant may establish an element of more than one offense, the defendant may be prosecuted for each offense of which such conduct is an element. The defendant may not, however, be convicted of more than one offense if: The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of conduct constitute separate offenses." (Enumeration omitted.)

State v. Alston, 75 Haw. 517, 531, 865 P.2d 157, 165 (1994) (all factual issues involved in an HRS § 710-109(1)(e) determination must be decided by the trier of fact) (citing State v. Horn, 8 Haw. App. 167, 169, 796 P.2d 503, 504 (1990)).

Moreover, in opposing Manuel's motion, the prosecutor argued that, upon the evidence proffered in opening statement, Manuel could be convicted of theft in the second degree on the alternative theory of accomplice liability.[9/] See State v. Yip, 92 Hawai'i 98, 116, 987 P.2d 996, 1014 (App. 1999) (principles of accomplice liability do not require "that the Defendant specifically intended the ultimate results of his principal's conduct").

Finally, we do not agree with Manuel that the prosecutor in his opening statement conceded Manuel's claim that he took only $85.00 the first time. The prosecutor stated, instead:

> [Johnson] had counted the money he had taken [the first] time, which was one hundred five dollars. [Manuel's] statement is he took eighty-five dollars at that point.
>
> [Johnson] will tell you that he counted what he took, but he did not see what [Manuel] took. At that time he doesn't know how much money [Manuel] took at that time, just what [Manuel] told him was eighty-five dollars, and what [Manuel] told the police it was eighty-five dollars.

[9/] HRS § 702-222(1) (1993) provides, in pertinent part, that "[a] person is an accomplice of another person in the commission of an offense if: With the intention of promoting or facilitating the commission of the offense, the person: Solicits the other person to commit it; or [a]ids or agrees or attempts to aid the other person in planning or committing it[.]" (Enumeration omitted.)

And in opposing Manuel's motion, the prosecutor argued

> Molokai Ranch personnel will say the total amount taken was over nine hundred dollars. The only evidence you are going to get on the second incident they took -- five hundred dollars was taken. If you subtract nine hundred dollars from five hundred dollars, that's four hundred dollars. That means on the first incident four hundred dollars was taken, so multiple theories, your Honor. I don't know exactly where it falls.

The jury, as the sole and exclusive arbiter of the credibility of witnesses and the weight of evidence, Tachibana v. State, 79 Hawai'i 226, 239, 900 P.2d 1293, 1306 (1995), certainly could have concluded that Johnson and Manuel together took more than $300.00 the first time, especially in light of the $900.00 total loss reported by Moloka'i Ranch and the $900.00 in restitution Johnson made soon after the crime.

In sum, we conclude the court did not err in denying the motion to dismiss Manuel made immediately after the prosecutor's opening statement.

The foregoing reasoning, when applied to the evidence adduced at trial taken in the light most favorable to the State, dictates our conclusion that the court also did not err in denying the two motions for judgment of acquittal Manuel brought during trial, as there was substantial evidence presented at trial to support Manuel's conviction for theft in the second degree.[10/]

[10/] Where the sufficiency of the evidence at trial is challenged on appeal, the standard of review is well-established:

> We have long held that evidence adduced in the

B. Jury Instructions on Continuing Course of Conduct.

With respect to the court's jury instructions, Manuel first maintains that the court committed plain error by failing to "provide the jury with the alternative of finding [Manuel] guilty of two separate offenses." Opening Brief at 12. We reject out of hand the suggestion that Manuel, charged with only one felony offense, should have been convicted by the jury of two misdemeanor offenses.[11/]

Manuel also argues that the court committed plain error

> trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or a jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed.
>
> "Substantial evidence" as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. And as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence.

State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995) (brackets, citations and internal block quote format omitted). "Furthermore, it is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence." Tachibana v. State, 79 Hawai'i 226, 239, 900 P.2d at 1293, 1306 (1995) (brackets, citation and internal quotation marks omitted).

[11/] The court instructed the jury that, "You may bring in only one of the following verdicts. One, Not guilty or, two, guilty as charged, or three, guilty of the included offense of theft in the third degree, or four, guilty of the included offense of theft in the fourth degree."

because it failed to instruct the jury that in order to convict Manuel of the felony charge, it had to find that he engaged in a "continuing course of conduct[,]" and that his "course of conduct [was] uninterrupted." Opening Brief at 29. For this contention, Manuel relies upon HRS § 701-109(1)(e) (1993):

> When the same conduct of a defendant may establish an element of more than one offense, the defendant may be prosecuted for each offense of which such conduct is an element. The defendant may not, however, be convicted of more than one offense if: The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of conduct constitute separate offenses.

(Enumeration omitted.) Manuel's reliance is misplaced. The plain language of HRS § 701-109(1)(e) refers to the situation in which the State illegitimately attempts to convict a defendant of multiple offenses arising out of a single, continuing course of conduct. As we have held,

> HRS § 701-109(1)(e) was intended to prohibit the State from dividing a crime, defined by statute as a continuing offense, into separate temporal or spatial units, and then charging a defendant with committing several counts of the same statutory offense, each count based on a separate temporal or spatial unit of the continuing offense. That did not occur here.

State v. Caprio, 85 Hawai'i 92, 104, 937 P.2d 933, 945 (App. 1997). That did not occur here, either.

C. Jury Instructions on Unanimity.

Manuel next argues:

> In the instant case, the jury may have determined [Manuel] and [Johnson] received more than $300.00 at the time of the initial theft. Likewise, the jury may have determined that [Manuel] was guilty based upon the possibility that he received $225 in the second theft, when combined with the original $85,

> would exceed $300.00. Or, the jury could have determined that in the first theft [Manuel] took more than $300 apart from any money taken by Johnson. Based on the possibility of several acts described in the evidence, and the fact that the evidence did not include any certainty as to the value of the dispersal receipts that were missing, or any certainty as to the value of the amount of cash originally in the cash box, or the value amount taken in each theft, [Manuel] was entitled to a unanimity instruction corresponding to the specific acts complained of.

Opening Brief at 32. We disagree.

In State v. Arceo, 84 Hawai‘i 1, 32-33, 928 P.2d 843, 874-75 (1996), the supreme court held that

> when separate and distinct culpable acts are subsumed within a single count charging a sexual assault -- any of which could support a conviction thereunder -- and the defendant is ultimately convicted by a jury of the charged offense, the defendant's constitutional right to a unanimous verdict is violated unless one or both of the following occurs: (1) at or before the close of its case-in-chief, the prosecution is required to elect the specific act upon which it is relying to establish the "conduct" element of the charged offense; or (2) the trial court gives the jury a specific unanimity instruction, *i.e.* an instruction that advises the jury that all twelve of its members must agree that the same underlying criminal act has been proved beyond a reasonable doubt.

But here, no matter what theory of criminal responsibility the jury accepted, whether it be accomplice liability, aggregation of amounts or theft of more than three hundred dollars in the first instance, each alternative theory required that the jury find the conceptually necessary supporting instance or instances of conduct on Manuel's part. Otherwise, there could be, conceptually, no felonious complicity, aggregation or single instance of theft, as the case may be. And the court instructed the jury as to each of the alternative theories of criminal responsibility. Under these circumstances, Arceo did not apply

and a unanimity instruction was not required.

D. Application of HRS § 701-109.

Manuel next argues that the court committed plain error in allowing the State to proceed under HRS § 701-109(1)(e):

> In the instant case, the evidence demonstrated that [Manuel] could have been charged with one count of Theft in the Third Degree based on accomplice liability by [Manuel] taking $85.00, combined with [Johnson's] theft of [$]105.00. [Manuel] could also have been charged with Theft in the Third Degree for his receipt of stolen property by his conduct of receiving property ($255.00) he knew had been stolen. Pursuant to HRS [§] 701-109, the prosecution would have been required to consolidate the two offenses by bringing two counts under one complaint to prevent successive prosecutions.
>
> The government interpreted the provisions of HRS [§] 701-109 to allow prosecution of two separate violations of misdemeanor statutory provisions by combining the two types of thefts under the charge of one offense. The State's position was that aggregating the values of each offense, allowing prosecution of a felony theft as the aggregate value taken from the complainant exceeded $300. The State's position is not authorized by any statute of Hawai'i, nor is it supported by any case law in Hawai'i. Accordingly, the court committed plain error by allowing the prosecution to proceed.

Opening Brief at 16. We disagree. The State did not proceed under HRS § 701-109. It is Manuel who utilizes HRS § 701-109(1)(e) to bootstrap all of his arguments on appeal about a "continuing course of conduct" which must be "uninterrupted," which we have decided are inapplicable to this case. This point on appeal has no merit.

E. Sufficiency of the Evidence.

Manuel also complains "that there was insufficient evidence upon which the jury could find [Manuel] guilty of the charge of Theft in the Second Degree." Opening Brief at 18. Our

previous consideration of Manuel's motions for judgment of acquittal also covers and rejects this point on appeal.

F. The Modica Rule.

Finally, Manuel claims that the State's charge of a felony (theft in the second degree) as opposed to two misdemeanors (theft in the third[12/] and/or fourth degree[13/]) violated his right to due process and equal protection of the laws pursuant to the rule established in State v. Modica, 58 Haw. 249, 567 P.2d 420 (1977). We disagree.

> The eponymous Modica rule provides that where the same act committed under the same circumstances is punishable either as a felony or as a misdemeanor, under either of two statutory provisions, and the elements of proof essential to either conviction are exactly the same, a conviction under the felony statute would constitute a violation of the defendant's rights to due process and the equal protection of the laws.

Id. at 251, 567 P.2d at 422 (citations omitted). The State submits that the material elements of theft in the third degree and theft in the fourth degree are not "exactly the same" as the material elements of theft in the second degree. Id. The degree of theft varies with the degree of monetary loss. Being that the amount of monetary loss is a material element, the State argues that a Modica violation has not occurred. We agree.

[12/] HRS § 708-832(1)(a) (1993) provides that "[a] person commits the offense of theft in the third degree if the person commits theft: Of property or services the value of which exceeds $100[.]" (Enumeration omitted.)

[13/] HRS § 708-833(1) (1993) provides that "[a] person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of $100."

III. Conclusion.

Based on the foregoing, we affirm the July 26, 2000 judgment.

DATED: Honolulu, Hawaii, August 29, 2002.

On the briefs:

Verdine Kong,
for defendant-appellant.

Chief Judge

Simone C. Polak,
Deputy Prosecuting Attorney,
County of Maui, for
plaintiff-appellee.

Associate Judge

Associate Judge