

NO. 26746

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
LOUIS DALE CAMBRA, Defendant-Appellant

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APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 02-1-0623 (1))

MEMORANDUM OPINION

(By: Burns, Chief Judge, Foley, and Nakamura, JJ.)

Defendant-Appellant Louis Dale Cambra (Cambra) appeals from the Amended Judgment filed on November 17, 2004, in the Circuit Court of the Second Circuit (circuit court).¹ As part of his appeal, Cambra challenges the circuit court's "Findings of Fact, Conclusions of Law, and Order Denying Motion to Suppress Evidence" (Order Denying Motion to Suppress) filed on April 5, 2004.

Cambra was indicted on two counts of Attempted Promoting a Dangerous Drug in the First Degree (Attempted PDDI), in violation of HRS §§ 712-1241(1)(b)(ii)(A) (Supp. 2003)² and

¹ The Honorable Joel E. August presided.

² HRS § 712-1241(1)(b)(ii)(A) (Supp. 2003) provides:

(1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

(b) Distributes:

(ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:

705-500 (1993)³ (Counts 1 and 2), and one count of Prohibited Acts Related to Drug Paraphernalia, in violation of HRS § 329-43.5(a) (1993)⁴ (Count Three). Count 1 was alleged to have been committed on September 28, 1999, and Counts 2 and 3 on October 1, 2002. Count 1 was severed from Counts 2 and 3, and Cambra proceeded to trial on the latter counts. The jury returned verdicts finding Cambra guilty as charged on Counts 2 and 3. The circuit court sentenced Cambra to twenty years' imprisonment on Count 2, with a mandatory minimum term of six years and eight months pursuant to HRS § 706-606.5 (Supp. 2005) (repeat offender) and HRS § 712-1241(3) (Supp. 2003), and to five years' imprisonment on Count 3. The court imposed Cambra's terms of imprisonment concurrently with each other and with any other

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- (A) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers. . . .

³ HRS § 705-500 (1993) provides, in relevant part:

(1) A person is guilty of an attempt to commit a crime if the person:

(b) Intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

⁴ HRS § 329-43.5 (1993) provides, in relevant part:

(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to . . . process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

state or federal sentence Cambra is or will be serving.

On appeal, Cambra argues that the circuit court erred in: 1) denying his motion to suppress evidence because alleged defects in the preparation and filing of the search warrant return and inventory required suppression of the evidence seized; and 2) allowing an expert to testify about the chemical composition and weight of the substances seized from Cambra without an adequate foundation for such testimony. We disagree with Cambra's arguments and affirm.

I.

On September 26, 2002, a search warrant (SW 2002-002) was issued for Cambra's person. Cambra does not challenge the validity of the issuance of this warrant. SW 2000-002 was executed on October 1, 2002. From a "fanny" pack worn by Cambra, the police recovered eight plastic packets containing approximately 11 grams of methamphetamine, numerous empty plastic packets, a glass pipe with residue, and other drug paraphernalia. After Cambra's arrest, the police also recovered approximately \$7,000 in cash from Cambra's pocket during an inventory search at the police station.

Cambra contends that the circuit court should have suppressed the evidence seized pursuant to SW 2002-002 because 1) the return of the search warrant was not signed by a judge; and 2) the inventory of items seized was not signed by a second credible person as a witness to the inventory. Cambra's contentions are without merit.

Hawaii Rules of Penal Procedure (HRPP) Rule 41(d) provides:

(d) Execution and return with inventory. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request cause to be delivered a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

Cambra's claim that the return of the search warrant was not signed by a judge was based on an unsigned copy of the return Cambra had received in discovery. However, the record establishes that the original search warrant return filed in the District Court of the Second Circuit was signed by Judge Eric G. Romanchak. Indeed, a copy of the signed original return was admitted in evidence at Cambra's suppression hearing. Cambra's claim that the return was not signed by a judge is refuted by the record.

Maui Police Department (MPD) Officer Randy Esperanza (Officer Esperanza) conducted his initial search of the fanny pack while it was still being worn by Cambra. The contents of the fanny pack were not fully inventoried until after Cambra was arrested and no longer present.

Cambra claims that the State of Hawaii (the State) violated HRPP Rule 41(d) because the only person signing the

inventory as a witness was Officer Esperanza, who applied for the warrant. HRPP Rule 41(d), however, only requires that the inventory of items seized be made in the presence of at least one credible witness other than the applicant for the warrant; it does not require that this credible person sign the inventory. Testimony presented at the suppression hearing and at trial showed that Officer Jeffery Hunt (Officer Hunt) assisted Officer Esperanza in processing the evidence recovered from Cambra's fanny pack, indicating that the inventory prepared by Officer Esperanza was made in Officer Hunt's presence. In addition, the Return and Affidavit prepared by Officer Esperanza states that the inventory was made in the presence of Officer Hunt.

In any event, the Hawai'i Supreme Court has held that "where . . . there has been no showing that a violation of [HRPP] Rule 41(d) procedures has resulted in prejudice to the defendant's rights, a suppression remedy is not appropriate." State v. Stachler, 58 Haw. 412, 422-23, 570 P.2d 1323, 1330 (1977).⁵ Cambra did not dispute that eight plastic packets containing approximately 11 grams of methamphetamine and the drug paraphernalia as described in the search warrant inventory had been seized from his fanny pack.⁶ There was no showing that any

⁵ In State v. Stachler, 58 Haw. 412, 570 P.2d 1323 (1977), the Hawai'i Supreme Court noted that federal decisions considering violations of Federal Rules of Criminal Procedure (FRCP) Rule 41(d), after which Hawai'i Rules of Penal Procedure Rule 41(d) was patterned, have held that "the procedural requirements of [FRCP] Rule 41(d), although important, are essentially ministerial in nature." Id. at 442, 570 P.2d at 1329-30.

⁶ Defendant-Appellant Louis Dale Cambra (Cambra) did not dispute that the evidence attributed to him at trial had been seized from him by the police. He only contended that his driver's license had been in his wallet

alleged violation of HRPP Rule 41(d) resulted in prejudice to Cambra's rights.

II.

MPD Criminalist Julie Wood was qualified as an expert in the field of drug identification. Wood used a certified analytical balance to weigh the substances seized from Cambra. She used a chemical microcrystalline test as well as a Fourier Transform Infrared Spectrometer (FTIRS) to analyze the substances for methamphetamine. Wood was permitted to testify that there were 11.326 grams of a substance containing methamphetamine in the eight packets seized from Cambra's fanny pack and 0.116 gram of a substance containing methamphetamine in the glass pipe seized from his fanny pack.

Cambra contends that the circuit court erred in permitting Wood's testimony because there was no adequate foundation laid that the analytical balance and FTIRS were in proper working order or that the chemicals used in the microcrystalline test were "of adequate scientific quality." We disagree and conclude that the foundation laid by the prosecution was more than adequate to support the admission of Wood's expert testimony on the results of her tests. See State v. Long, 98 Hawai'i 348, 355, 48 P.3d 595, 602 (2002).

and not in his fanny pack, as Officer Randy Esperanza had asserted. Because Cambra did not dispute his possession of the methamphetamine and drug paraphernalia seized from his fanny pack, the location of Cambra's driver's license was not important.

A.

With respect to the analytical balance, Wood testified that the balance was tested annually for accuracy by an independent service technician, who recalibrated the balance, if necessary. The company performing the annual test sent Wood certificates of calibration verifying that the balance was operating properly both before and after she used the balance to weigh the substances in this case. Wood also personally checked the balance for accuracy on a monthly basis by using a set of weights she kept in the laboratory. The weights used by Wood, in turn, were sent annually to an outside laboratory to be checked for accuracy and were confirmed to be accurate. Wood stated that the methods she used to assure that the balance was in proper working order were accepted by the scientific community as appropriate. We conclude that the State laid a sufficient foundation that the analytical balance used by Wood was in proper working order. See Long, 98 Hawai'i at 355, 48 P.3d at 602.

We reject Cambra's contention that the foundation showing that the balance was in proper working order was insufficient because documents certifying that the balance had been calibrated and that the weights used by Wood were accurate were not introduced. As an expert, Woods was entitled to rely on hearsay regarding these matters as long as it was the type of information reasonably relied upon by experts in her field. Hawaii Rules of Evidence (HRE) Rule 703 (1993). HRE Rule 703 provides in relevant part:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Wood was entitled to rely on the information contained in the documents certifying that the balance had been properly calibrated and that the weights she used were accurate even if those documents were not admitted in evidence. Wood testified, without contradiction, that the procedures she used to assure that the balance was in proper working order were accepted by those in her field of expertise.

B.

As to the FTIRS, Wood testified that she followed a standard daily routine of performing quality assurance checks to ensure that the FTIRS was in proper working order. This consisted of first running a background check to see how the machine was analyzing the air in the laboratory and comparing that with an analysis of a blank sample. The blank sample should result in a fairly flat line graph. Wood then ran a known polystyrene standard, which was provided by the FTIRS's manufacturer, and compared the graph produced with the graph generated by a previous analysis of the polystyrene standard. If the graphs match, the FTIRS is in proper working order.

Wood stated that she performed all the quality assurance tests that were part of her standard daily routine on the day that she used the FTIRS to analyze the substances in Cambra's case and that the FTIRS was in proper working order.

Wood further asserted that the method she used to verify that the FTIRS was in proper working order was generally accepted by the scientific community and was also the method recommended by the manufacturer of the FTIRS.

Wood testified that in using the FTIRS to analyze the substances seized from Cambra to determine if they contained methamphetamine, she prepared samples taken from the unknown substances seized from Cambra. She then compared the graphs produced by running the samples of the unknown substances through the FTIRS with the graph produced by a known standard sample of methamphetamine. The known standard sample of methamphetamine had been prepared by a chemical company and was accompanied by a certificate of analysis. To further verify the accuracy of the known standard sample of methamphetamine, Wood had previously ran the sample through the FTIRS and compared the graph produced with the FTIRS graph for methamphetamine contained in published reference materials. Wood testified that the results of her FTIRS analyses of the substances seized from Cambra established that the substances contained methamphetamine.

Cambra contends that there was an inadequate foundation for Wood's testimony because "no documentation as [to] the accuracy and/or calibration of the [FTIRS] was offered." We reject Cambra's contention. Wood's testimony established that the FTIRS was in proper working order. There was no need to introduce documents to lay the proper foundation. We specifically reject Cambra's claim that in order to lay a

foundation for the admission of the FTIRS results, the prosecution was required to introduce the graphs generated by Wood in performing the quality assurance tests.

C.

Wood testified that in addition to the FTIRS analyses, she performed preliminary microcrystalline tests on the substances seized from Cambra to determine whether they contained methamphetamine. To perform the microcrystalline tests, Wood created a reagent solution by mixing gold chloride and phosphoric acid. She tested the reagent against a known standard of methamphetamine before using it. The reagent was then mixed with samples taken from the substances seized from Cambra and examined under a microscope. Wood testified that if the reagent was contaminated with methamphetamine, it would turn cloudy before the substance being tested was added. The reagent was not cloudy in this case. The microcrystalline tests performed on the substances seized from Cambra were all positive for the presence of methamphetamine.

Cambra argues that an inadequate foundation was laid to admit the results of the microcrystalline tests because there was no "manufacturer's certificates of authenticity to indicate the reagents used to perform the tests were in fact what they purported to be." We reject Cambra's argument. We conclude that Wood's testimony regarding the procedures she followed to assure the validity of the microcrystalline tests was sufficient to permit the admission of the test results. The introduction of

manufacturers' certifications for the chemicals used to prepare the reagent was not necessary to lay an adequate foundation; the absence of such certifications went to the weight and not the admissibility of the microcrystalline test results.

D.

Cambra, of course, could have conducted his own tests to determine the weight of the substances and whether they contained methamphetamine if he believed that Wood's testimony on these matters was erroneous. Cambra's ability to directly challenge Wood's testimony by conducting his own tests supports our view that Cambra's objections went to the weight and not the admissibility of Wood's testimony.

CONCLUSION

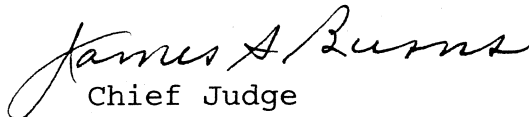
We affirm the circuit court's November 17, 2004, Amended Judgment and its April 5, 2004, "Findings of Fact, Conclusions of Law, and Order Denying Motion to Suppress Evidence."

DATED: Honolulu, Hawai'i, October 25, 2006.

On the briefs:

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County of Maui
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Chief Judge


Associate Judge


Associate Judge