

NO. 27554

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
ISAAC K. MANEWA, JR., Defendant-Appellant,  
and  
JACQUELINE MAY PERKINS and THOMAS M. LEOPOLDO, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 04-1-0304)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Isaac K. Manewa, Jr. (Manewa) appeals from the Judgment entered by the Circuit Court of the First Circuit (circuit court) on September 28, 2005.<sup>1/</sup> A jury convicted Manewa of Promoting a Dangerous Drug in the First Degree in violation of Hawaii Revised Statutes (HRS) § 712-1241(1)(b)(ii)(A) (Supp. 2003) and Promoting a Dangerous Drug in the Second Degree in violation of HRS § 712-1242(1)(b)(i) (1993 & Supp. 2003).

On appeal, Manewa advances eighteen points of error (at trial, for the following points 1 through 14, the circuit court granted Manewa a running objection that no proper foundation had been laid for the opinions of Hassan Mohammed (Mohammed), the

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<sup>1/</sup> The Honorable Richard K. Perkins presided.

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State's chemist, as to the weight and nature of all substances tested):

(1) The circuit court erred in allowing Mohammed to testify as to the weight of State's Exhibit Number 7.

(2) The circuit court erred in allowing Mohammed to testify as to the results of a microcrystalline test performed on State's Exhibit 7.

(3) The circuit court erred in allowing Mohammed to testify to the results of a Gas Chromatograph Mass Spectrometer (GCMS) test performed on State's Exhibit 7.

(4) The circuit court erred in allowing Mohammed to testify to the weight of the substance identified as State's Exhibit 2.

(5) The circuit court erred in allowing Mohammed to testify as to the results of a microcrystalline test and a GCMS test performed on State's Exhibit 2.

(6) The circuit court erred in allowing Mohammed to testify to the weight of the substance identified as State's Exhibit 3.

(7) The circuit court erred in allowing Mohammed to testify to the results of the microcrystalline and GCMS tests performed on State's Exhibit 3.

(8) The circuit court erred in allowing Mohammed to testify to the aggregate weight of the substance identified as State's Exhibit 3.

(9) The circuit court erred in allowing Mohammed to testify as to the aggregate weight of State's Exhibit 4 and also that State's Exhibits 4, 5, and 6 all contained an off-white crystalline substance.

(10) The circuit court erred in allowing Mohammed to testify that the results of the microcrystalline and GCMS tests on Exhibit 4 indicated that the substance could be and was, in fact, "ice" (crystal methamphetamine).

(11) The circuit court erred in allowing Mohammed to testify that the aggregate weight of State's Exhibit 5 was less than one-eighth of an ounce.

(12) The circuit court erred in allowing Mohammed to testify that the results of the microcrystalline and GCMS tests on Exhibit 5 indicated that the substance could be and was, in fact, ice.

(13) The circuit court erred in allowing Mohammed to testify as to the aggregate weight of State's Exhibit 6.

(14) The circuit court erred in allowing Mohammed to testify as to the results of the microcrystalline and GCMS tests performed on State's Exhibit 6.

(15) The circuit court erred in receiving Exhibits 2-7 into evidence without requiring that a proper foundation had been laid for Mohammed to testify as to the identity and weights of those exhibits.

(16) The circuit court erred in denying Manewa's motion to strike the testimony of Mohammed regarding the proper servicing and calibration of the GCMS and Fourier Transform Infrared Spectrometer (FTIR) because the testimony was inadmissible hearsay and in denying Manewa's motion to strike Mohammed's testimony as to the identity of the State's drug exhibits.

(17) The circuit court erred in allowing Mohammed to testify to the calibration of the equipment employed in weighing the State's drug exhibits because Mohammed did not provide the maintenance logs for the equipment and thus his testimony was inadmissible hearsay.

(18) The circuit court erred in declining to reconsider its ruling as to the identity and weight testimony because a prima facie case on the drug counts had not been established.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we hold:

(1) The Circuit Court did not abuse its discretion in allowing Mohammed to opine on the weight and identity of the State's drug evidence. Manewa's points of error hinge on the argument that because "the State failed to establish a sound

factual foundation for the test results, Mohammed's testimony as to said results was not reliable."

Whether expert testimony should be admitted at trial is a matter within the discretion of the trial judge, and absent an abuse of that discretion, this court will not overturn the decision of the trial judge. State v. Wallace, 80 Hawai'i 382, 406, 910 P.2d 695, 719 (1996). Expert testimony must be relevant and reliable. Id. at 407, 910 P.2d at 720. Reliability of expert scientific testimony depends on "proper application of valid techniques grounded in valid underlying principles." Id. Reliability requires a "sound factual foundation." Id. Before the results of an out-of-court test "may be introduced into evidence, a foundation must be laid showing that the test result can be relied on as a substantive fact." Id. (internal quotation marks and citation omitted). A "foundational prerequisite for the reliability of a test result is a showing that the measuring instrument is in proper working order." Id. (internal quotation marks and citation omitted). "Therefore, a proper foundation for the introduction of a scientific test result would necessarily include expert testimony regarding: (1) the qualifications of the expert; (2) whether the expert employed valid techniques to obtain the test result; and (3) whether the measuring instrument is in proper working order." State v. Long, 98 Hawai'i 348, 355,

48 P.3d 595, 602 (2002) (internal quotation marks and citation omitted).

The parties here agree that Mohammed was properly qualified as an expert witness. The circuit court accepted Mohammed as an expert in the field of drug analysis and identification without any objection by Manewa. Manewa argues that the State failed to satisfy the second prong under Long because Mohammed did not aver that the presumptive color reagent test was recognized in his field. Manewa, however, directs this court to no portion of the record where he objected to this alleged failure, and thus the point is deemed waived. HRE Rule 103.

Manewa's most substantial argument is to the third prong of the Long test. Manewa argues that Mohammed had no personal knowledge that the instruments he used were properly calibrated and/or serviced. Manewa contends that Mohammed admitted the instruments were electronic and he had never himself calibrated them and instead relied upon the semi-annual calibrations performed by the manufacturer's representative. Manewa asserts that Mohammed did not supply the logs completed by the manufacturer's representative and thus his testimony that the equipment was calibrated properly amounts to inadmissible hearsay. However, Mohammed testified that he had personal knowledge that the balance was serviced semi-annually. In

Wallace, the testifying expert lacked personal knowledge that his scale had been properly calibrated, merely relied on the assumption that the manufacturer's representative had done so, and failed to supply the service records; in that failure, the Hawai'i Supreme Court found error. Wallace, 80 Hawai'i at 412, 910 P.2d at 725. While the State did not produce the maintenance records for the balance in question, the State did offer an independent source of reliable evidence that the balance was working properly. Mohammed, the State's expert, testified on direct examination that he personally verified and validated the balance monthly, in addition to the semi-annual service by the manufacturer's representative. Mohammed's testimony that he himself verified and validated his balance therefore satisfies the third prong of the Long test. Likewise, as to the reliability of the GCMS equipment, Mohammed testified that "[e]ach and every morning before any chemist uses one of several GCMSs, we do a routine check on them to ensure that all the parameters are within the manufacturer specification." He testified that if "any parameter is out of spec, we do not use it until it's rectified." Thus the State offered reliable evidence that the GCMS was operating correctly. Mohammed's testimony rested upon a satisfactory foundation. Similarly, because Mohammed's testimony was based on his own personal knowledge that

the equipment had been verified and was working properly, his testimony was not hearsay.

(2) The circuit court did not err by failing to exclude Mohammed's testimony, pursuant to HRE Rule 702. HRE Rule 702 requires that the witness be qualified as an expert and that his evidence be reliable. Mohammed testified that to his personal knowledge his equipment had been calibrated and in good working order. The parties agreed at trial that Mohammed was qualified properly as an expert witness. Having determined that Mohammed's testimony rested on a sufficient foundation, this court sees no merit in Manewa's HRE Rule 702 argument.

(3) The circuit court did not abuse its discretion by relying on HRE Rule 703 in admitting Mohammed's testimony. Mohammed testified that to his personal knowledge both his analytical balance and the other instruments he used had been maintained and were in good working order on the day he tested the State's drug evidence.

(4) The circuit court did not abuse its discretion by failing to exclude Mohammed's testimony as irrelevant, pursuant to HRE Rule 403. Manewa argues that the subject matter of the State's expert was beyond his demonstrated expertise because Mohammed was not an expert in calibrating his own equipment. Manewa, however, directs the court to no authority standing for the proposition that an expert witness must not only have

personal knowledge of his equipment's calibration, but also be an expert in the calibration of said equipment.

Therefore,

IT IS HEREBY ORDERED that the Judgment entered on September 28, 2005 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 20, 2006.

On the briefs:

Glen D. Choy  
for Defendant-Appellant.

Donn Fudo,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge