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NO. 28167

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

2008 JUL 23 AM 8:02
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STATE OF HAWAI'I, Plaintiff-Appellee, v. ANTHONY PETER FRUSTAGLI, aka PETER ROSELLI, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Cr. No. 05-1-2199)

SUMMARY DISPOSITION ORDER
(By: Watanabe, Presiding J., and Foley, J.;
and Nakamura, J., dissenting)

Defendant-Appellant Anthony Peter Frustagli, also known as Peter Roselli, (Frustagli) appeals from the Judgment of Conviction and Probation Sentence entered by the Circuit Court of the First Circuit[1] (circuit court) on August 30, 2006, following a jury verdict that found Frustagli guilty of Promoting a Dangerous Drug in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (Supp. 2007).[2]

At trial, the circuit court admitted into evidence a stipulation by Frustagli and Plaintiff-Appellee State of Hawai'i (State) that established (1) the chain of custody for two ziploc bags recovered from Frustagli's person during a pre-incarceration search conducted at the Honolulu police station following Frustagli's arrest on outstanding warrants, and (2) that laboratory tests revealed that one of the ziploc bags contained .013 grams of methamphetamine.

On appeal, Frustagli's sole argument is that the circuit court plainly erred in admitting the stipulation into

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[1] The Honorable Dexter D. Del Rosario presided.

[2] The current version of HRS § 712-1243 has not changed since Frustagli allegedly committed the offense of Promoting a Dangerous Drug in the Third Degree.

evidence without first conducting an on-the-record colloquy with Frustagli to ensure that he was knowingly and voluntarily waiving his constitutional rights to confront all of the witnesses who had handled the ziploc bags, and to have the State prove, beyond a reasonable doubt, every element of the drug offense with which he was charged.

In light of the Hawai'i Supreme Court's recent opinion in State v. Murray, 116 Hawai'i 3, 169 P.3d 955 (2007), we have no alternative but to agree with Frustagli that an on-the-record colloquy was required. Accordingly, we vacate the August 30, 2006 Judgment and remand for a new trial.

DATED: Honolulu, Hawai'i, July 23, 2008.

Corinne K.A. Watanabe

Daniel R. Foley

On the briefs:

Karen T. Nakasone,
deputy public defender,
State of Hawai'i,
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James M. Anderson,
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