* * * NOT FOR PUBLICATION * * *

NO. 27258

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee/Cross-Appellant,

vs.

BETTY ANZAI, Defendant-Appellant/Cross-Appellee.

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 04-1-0024)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant-appellant/cross-appellee Betty Anzai appeals from the Circuit Court of the Third Circuit's April 19, 2005 judgment[1] convicting her of and sentencing her for theft in the second degree in violation of Hawai'i Revised Statutes (HRS) §§ 708-830(8) (Supp. 2005)[2] and 708-831(1)(b) (1993).[3] On

[1] The Honorable Greg K. Nakamura presided over this matter.

[2] HRS § 708-830(8) provides in relevant part:

> (8) Shoplifting.
> (a) A person conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud.
> (b) A person alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.
> (c) A person transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud.

[3] HRS § 708-831(1)(b) provides:

> **Theft in the second degree.** (1) A person commits the offense of theft in the second degree if the person commits theft:
> . . . .

(continued...)

appeal, Anzai contends that the trial court erred when it admitted duplicate (as opposed to the original) register receipts regarding the value of the stolen items into evidence. The State of Hawai'i [hereinafter, the State or the prosecution] cross-appeals, challenging the trial court's denial of its motion to sentence Anzai as a repeat offender under HRS § 706-606.5 (1993), quoted infra.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve the parties' contentions as follows.

(1) Anzai contends that the pricing information as shown on the duplicate register receipts entered into evidence as Exhibit 4A was inadmissible hearsay and, thus, should have been excluded by the trial court. Anzai further argues that, even assuming that there is a hearsay exception for admitting the duplicate register receipts into evidence, the State failed to "duly identify" or properly authenticate the duplicate register receipts.

In State v. Long, 98 Hawai'i 348, 48 P.3d 595 (2002), this court held that a "'lack of foundation' objection generally is insufficient to preserve foundational issues for appeal

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[3](...continued)

(b) Of property or services the value of which exceeds $300[.]

(Bold emphasis in original.) Theft in the second degree is a class C felony. HRS § 708-831(2).

because such an objection does not advise the trial court of the problems with the foundation." Id. at 353, 48 P.3d at 600. However, the Long court noted that "an exception is recognized when the objection is overruled and, based on the context, it is evident what the general objection was meant to convey." Id. Thus, a specific objection is not necessary "where the defect is obvious from the context." Long, 98 Hawai'i at 354, 48 P.3d at 601.

Here, after Decker and Hirayama testified with respect to the duplicate register receipts, the State moved Exhibit 4A into evidence. Defense counsel then conducted a voir dire examination of Hirayama's testimony. After Hirayama stated that he gave both the original and duplicate register receipts to Decker, the following dialogue occurred:

> [By defense counsel]: Thank you. Objection, Your Honor.
> [The Court]: Okay, it's received.
> [By the prosecution]: Thank you.

Accordingly, it is clear that Anzai's trial counsel made only a general objection against the admission of Exhibit 4A into evidence.

Nonetheless, such general objection will be sufficient to preserve an issue for appellate review only if "the defect is obvious from the context." Long, 98 Hawai'i at 354, 48 P.3d at 601. At trial, it appears that Anzai was objecting to the use of duplicate, as opposed to original, register receipts by the State. As such, Anzai was likely objecting to the admission of the duplicate register receipts on the basis of a lack of

foundation. However, on appeal, Anzai claims that Exhibit 4A was erroneously admitted into evidence inasmuch as (1) the duplicate register receipts constitute hearsay and (2) the prosecution failed to establish a proper foundation for the duplicate register receipts. Consequently, based on Anzai's own assertions on appeal, Anzai's trial counsel could have objected on at least two different grounds to the admission of Exhibit 4A into evidence. Moreover, unlike in Long, defense counsel in the instant case did not even state that the objection was based on insufficient foundation. Accordingly, we hold that Anzai failed to sufficiently preserve her hearsay and lack of foundation contentions for appellate review.[4]

(2) On cross-appeal, the State contends that the trial court erred in denying its motion to impose a mandatory term by concluding that Anzai's resentencing on December 12, 1995 cannot be considered a "conviction" for the purpose of calculating the ten-year time limit under HRS § 706-606.5(2). The State maintains that, because "[a] conviction occurs on the date judgment is entered[,]" HRS § 706-606.5(7)(c), and a resentencing is considered a judgment, the ten-year time limit can be measured from the December 12, 1995 resentencing. Inasmuch as Anzai

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[4] Anzai's final contention on appeal is that, "with the exclusion of the receipts (Exhibit 4A), the State failed to introduce the substantial evidence of the value of the items necessary to support the charged offense of theft in the second degree (shoplifting property of a value exceeding $300)." (Capital letters altered.) However, implicit in Anzai's argument is that, with the admission of Exhibit 4A, the State had introduced the substantial evidence of the value of the items necessary to support the charged offense. Moreover, HRS § 708-830(8) (Supp. 2005) unequivocally provides that "printed register receipts[] shall be prima facie evidence of value and ownership of . . . goods or merchandise."

committed the instant offense on December 26, 2003, the State contends that the instant offense was committed within ten years from December 12, 1995, and, thus, Anzai is subject to the mandatory minimum term of imprisonment.

HRS § 706-606.5(2) provides in relevant part:

> (2) Except as in subsection (3), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:
>
> . . . .
>
> (d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony[.]

(Emphasis added.) HRS § 706-606.5(7)(c) states that, for the purpose of section 706-606.5, "[a] conviction occurs on the date judgment is entered." Furthermore, HRS § 641-11 (1993) provides in relevant part that "[t]he sentence of the court in a criminal case shall be the judgment." See also State v. Rodriguez, 68 Haw. 124, 133, 706 P.2d 1293, 1300 (1985) (noting that this court has read "'conviction' to mean 'judgment' or 'sentence[]'").

In the instant case, if we were to accept the State's position that the ten-year time period in HRS § 706-606.5(2) can be measured from the resentencing of the prior felony conviction, such a construction would lead to the absurd result that there can be multiple convictions for the same offense. Inasmuch as "[t]he legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality[,]" State v. Naititi, 104 Hawai'i 224, 232, 87 P.3d 893, 901 (2004) (internal quotation marks, citations, and emphasis omitted), we conclude

that the ten-year time period in HRS § 706-606.5(2) be measured from the initial sentencing of the prior felony conviction. Thus, inasmuch as the instant felony committed on December 26, 2003 did not occur within ten years after Anzai's prior felony conviction on February 18, 1993, we hold that the trial court did not err when it denied the State's motion to impose a mandatory term. Therefore,

IT IS HEREBY ORDERED that the trial court's April 19, 2005 judgment is affirmed.

DATED: Honolulu, Hawai'i, March 13, 2006.

On the briefs:

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