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NO. CAAP-24-0000551

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee,
v.
KEVIN OKADA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTC-24-003022)

SUMMARY DISPOSITION ORDER
(By: Nakasone, Chief Judge, Leonard and Hiraoka, JJ.)

Defendant-Appellant Kevin Okada (**Okada**) challenges his conviction for driving without a license (**DWOL**) and sentencing as a repeat DWOL offender. We vacate and remand for new trial, based on the trial court's failure to make a voluntariness determination as required by Hawaii Revised Statutes (**HRS**) § 621-26.[1]

[1] HRS § 621-26 (2016) precludes the admission of a confession into evidence at trial unless the court first finds that the confession was "voluntarily made."

Okada appeals from the July 31, 2024 "Notice of Entry of Judgment and/or Order and Plea/Judgment" (**Judgment**), entered by the District Court of the First Circuit (**District Court**).[2] Following a bench trial, Okada was convicted of DWOL in violation of HRS § 286-102 (2020) and sentenced as a third-time DWOL offender to seven days jail and six months of probation, pursuant to HRS § 286-136.[3]

On appeal, Okada raises three points of error (**POEs**), which we have reorganized for clarity, contending that the District Court erred by **(1)** "receiving into evidence a confession without making a voluntariness finding, in violation of HRS § 621-26 and Okada's constitutional right to due process"; **(2)** admitting Plaintiff-Appellee State of Hawaiʻi's (**State**) exhibits regarding Okada's prior DWOL convictions and traffic record into evidence because they were inadmissible hearsay, not self-authenticating, and/or violated Okada's right of confrontation; and **(3)** "sentencing Okada as a [full] misdemeanor offender" under HRS § 286-136(b) "based on insufficient evidence."[4]

Upon review of the record and the briefs submitted by the parties and having given due consideration to the arguments

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[2] The Honorable Ann S. Isobe presided.

[3] Relevant here, HRS § 286-136(b) (2020 & 2022 Supp.) prescribes the mandatory penalty for a third DWOL conviction, of a $500 to $1,000 fine, and/or imprisonment of up to one year, "if the person ha[d] two or more prior convictions" for DWOL "in the preceding five-year period."

[4] Because Okada's HRS § 621-26 challenge is dispositive, we do not address his remaining POE that the District Court erred by "conducting arraignment and amending the charge" when Okada had no counsel, an error for which Okada requested the identical remedy we otherwise grant here, which was to vacate and remand for a new trial.

advanced and issues raised, we resolve Okada's points of error as follows.

Following Okada's January 17, 2024 citation for DWOL, Plaintiff-Appellee State of Hawaiʻi (**State**) filed a Complaint against Okada as a repeat DWOL offender under HRS § 286-136(b).

The following record is from Okada's July 31, 2024 bench trial. Honolulu Police Department Officer Nolan Saffery (**Officer Saffery**) testified that on January 12, 2024, he pulled Okada over for driving a vehicle with an expired safety check. Over Okada's running HRS § 621-26 objection that a finding of voluntariness had not been made, the District Court allowed Officer Saffery to testify that when he asked Okada for his driver's license and proof of insurance, Okada told him that he did not have them, and that Okada provided Officer Saffery with his name, date of birth, and the last four digits of his social security number. The District Court reasoned that HRS § 621-26 did not apply because the statute "speaks to a confession[,]" and that Okada's statements were "admission[s] against interest [admissible] as an exception to the hearsay [rule]."

Maria Oandasan (**Oandasan**), a custodian of records for the Division of Motor Vehicle, Licensing and Permits at the City and County of Honolulu (**DMV**), testified that the DMV "maintain[s] driver's license records of individuals"; that the "records [are] made and kept in the regular course of business at the [DMV,]" and that the "records [are] generated at or near the time of the occurrence of events and matters described therein[.]" The State then moved to enter into evidence Exhibit 1, a "Drivers License Root Maintenance" print-out (**DMV Print-out**). The DMV Print-Out was a one-page document prepared by the DMV, certified by Nilda Ocreto, a DMV custodian of records, and

appeared to show that the driver's license of an individual named "Kevin Kalai Okada" had expired in 1996.

Okada objected to the DMV Print-Out's admission, citing "hearsay, lack of foundation, lack of personal knowledge, and also a violation of the confrontation clause[.]" On cross-examination by Okada's counsel, Oandasan testified that she "did not produce th[e] document," that she did not personally "update" the information in the document, and that the document was generated on February 20, 2024.

The District Court overruled the objection, finding that the DMV Print-Out fell under "the business records, public records [hearsay] exception[s]" and its admission would not violate Okada's right of confrontation because "the ministerial pulling of the information by the [certifying custodian of records] does not affect [its] substantive content."

The State also submitted into evidence Exhibit 2, which was Okada's traffic abstract (**Traffic Abstract**). The Traffic Abstract was a 123-page document prepared by the district court, containing its records of Okada's prior moving violations and infractions, certified by the district court clerk. For similar reasons as the DMV Print-Out, Okada objected to its admission; the District Court admitted the Traffic Abstract over Okada's objection.

Finally, the State moved to admit State's Exhibits 3 through 7, certified copies of District Court judgments in which Okada pled no contest to previous DWOL citations in five different case numbers, all entered in the preceding five years (collectively, the **Prior Judgments**). Okada objected, stating, "Same objection." The Prior Judgments were admitted over Okada's objection.

Okada did not testify or call any witnesses.

At the trial's conclusion, the District Court found Okada guilty as charged "under [HRS §] 286-102 and that there were two prior convictions within a five-year period[,]" as follows:

> [Officer Saffery] credibly testified that . . . he asked [Okada], who he identified in court[,] for his driver's license, safety and registration, and [Okada] made an admission against interest, and provided him with the last four digits of his Social Security number and his date of birth, and all of those vitals are correspondingly and accurately memorialized on all of the State's Exhibits, which include the [Traffic Abstract] and the [Prior Judgments], which were entered in 2022 and 2023 for [Okada]'s entry of no contest in prior DWOLs.
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> . . . .
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> [C]oupled with [Okada]'s admission, plus the information produced through the CRS databank and the credible testimony of the [DMV] custodian of records . . . that [Okada]'s license had been expired from 1996 . . . is persuasive to the Court that the State has born [sic] its burden of proof beyond a reasonable doubt.

Okada timely appealed the July 31, 2024 Judgment.

(1) Okada contends the District Court erred by admitting Okada's statement that Okada did not have a driver's license, and his statements providing his name, date of birth, and the last four digits of his social security number, "without making a voluntariness finding, in violation of HRS § 621-26 and Okada's constitutional right to due process."

The State concedes that the District Court erred by not holding a hearing or making "a factual determination of the voluntariness of [Okada's] statement[s]" before their admission into evidence. The State, however, presents various arguments that the error was harmless, which are unavailing in light of the Hawaiʻi Supreme Court's recent State v. Tolentino decision.

In State v. Tolentino, 158 Hawaiʻi 321, 332, 592 P.3d 209, 220 (2026), the supreme court held that "Article I, sections 5 and 10 of the Hawaiʻi Constitution, and HRS § 621-26 (2016) independently require a pretrial evidentiary hearing to establish voluntariness before the factfinder hears an inculpatory statement." Inculpatory statements include "any words spoken by the defendant that allows the factfinder to infer guilt[,]" such as "[e]xpress admissions relating to the charged or included offense, or facts establishing material elements[.]" Id. at 341, 592 P.3d at 229. The erroneous admission of an inculpatory statement without a mandatory HRS § 621-26 voluntariness determination is "evaluated under the harmless beyond a reasonable doubt" standard. Id. at 338, 592 P.3d at 226 (citation modified). Tolentino also clarified that the remedy for failure to hold a pretrial voluntariness hearing is a remand for a new trial, not a remand for a post-trial hearing. Id. at 339, 592 P.3d at 227.

Here, Okada's statements regarding not having a driver's license and giving his name, date of birth, and the last four digits of his social security number are "facts establishing material elements" for repeat DWOL offender status under HRS § 286-136(b), consistent with Tolentino's definition of an "inculpatory statement." See id. at 341, 592 P.3d at 229. The District Court's conclusion that HRS § 621-26 did not apply was erroneous. See State v. Alvarez, 138 Hawaiʻi 173, 181, 378 P.3d 889, 897 (2016) (reviewing a trial court's conclusions of law under the right/wrong standard (citation omitted)). Under Tolentino, we further conclude that because the required voluntariness determination was not made and the District Court expressly referenced the inculpatory statements in convicting

Okada, the error was not harmless beyond a reasonable doubt. See 158 Hawaiʻi at 332, 592 P.3d at 220; State v. Jones, 148 Hawaiʻi 152, 170, 468 P.3d 166, 184 (2020) (holding that "[i]n applying the harmless beyond a reasonable doubt standard, the court is required to examine the record and determine whether there is a reasonable possibility that the error complained of might have contributed to the conviction" (citations omitted)). Because "the protections a pretrial [voluntariness] hearing provides cannot be retroactively restored," and the lack of a voluntariness determination was not harmless beyond a reasonable doubt, "[t]he remedy is a new trial." Tolentino, 158 Hawaiʻi at 340-41, 592 P.3d at 228-29.

In this case, Okada raises a sufficiency challenge in POE 3, and various evidentiary challenges in POE 2. Where we remand for a new trial and the defendant has raised an evidentiary sufficiency challenge, as here, we conduct an evidentiary sufficiency review. See State v. Davis, 133 Hawaiʻi 102, 104, 324 P.3d 912, 914 (2014) (holding that "a reviewing court is required to address an express claim of insufficiency of the evidence prior to remanding for a new trial"). As such, we address the sufficiency challenge raised in POE 3. Because review for evidentiary sufficiency must be based on admissible evidence, we also address the evidentiary challenges raised in POE 2. See State v. Wallace, 80 Hawaiʻi 382, 412, 910 P.2d 695, 725 (1996) (reviewing sufficiency of evidence for substantial admissible evidence and by "[d]isregarding the erroneously admitted evidence").

(2) Okada raises various evidentiary challenges to the admission of the Prior Judgments in Exhibits 3 through 7, and Okada's traffic records in Exhibits 1 and 2.

Authentication challenge

Okada argues that the Prior Judgments were "not self-authenticating" under Hawaiʻi Rules of Evidence (**HRE**) Rule 902, because they did "not have an impressed seal[,]" did not have a "wet signature[,]" and lacked personal review by the court clerk, and thus did not meet the requirements under HRE Rule 902(1) and (4).[5] The record reflects that Okada lodged a general objection at trial to the Prior Judgments' admission on "lack of foundation" grounds, and did not raise the specific objections that he raises on appeal. These arguments are waived. See State v. Spies, 157 Hawaiʻi 75, 91, 575 P.3d 708, 724 (2025) ("[A] 'lack of foundation' objection generally is insufficient to preserve foundational issues for appeal because such an objection does not advise the trial court of the problems with foundation." (citation omitted)); State v. Moses, 102 Hawaiʻi 449, 456, 77 P.3d 940, 947 (2003) ("As a general rule, if a party does not raise an argument at trial, that argument will be deemed to have been waived on appeal[.]" (citations omitted)).

Confrontation clause challenge

Okada challenges the admission of all the exhibits -- the Prior Judgments in Exhibits 3 to 7, and the two traffic records in Exhibits 1 and 2 -- under the Confrontation Clause. Regarding the admission of the Prior Judgments, Okada relies on Crawford v. Washington, 541 U.S. 36 (2004) to argue that he "should have been allowed to cross-examine the clerks who attested to th[o]se documents[,]" because the clerks' "attestations" were "testimonial." Regarding the DMV Print-Out in Exhibit 1, Okada claims that "[t]he document was created for

[5] Okada does not raise an authentication challenge to the traffic records in Exhibits 1 and 2.

the purposes of prosecuting Okada[,]" and that Oandasan testified regarding the document but "was not the person who created it" and did not "know the name of the person who created the document." Okada raises similar arguments to the Traffic Abstract in Exhibit 2, that "Okada should be able to cross-examine the clerk . . . on how the [T]raffic [A]bstract was created," and how the various pieces of identifying information on the Traffic Abstract "are linked to" the Prior Judgments. Citing State v. Fields, 115 Hawaiʻi 503, 516, 527-28, 168 P.3d 955, 968, 979-80 (2007), Okada alternatively argues that even if the Prior Judgments are not testimonial, their admission still violated Okada's right of confrontation under the Hawaiʻi Constitution because admission of non-testimonial hearsay requires "a showing that (1) the declarant is 'unavailable,' and (2) the statement bears some indicia of reliability" under Ohio v. Roberts, 448 U.S. 56 (1980).

The State responds that the Prior Judgments are not testimonial, because they were "not specifically created for future use in court" and "were produced in the course of past litigation and are kept as part of the [d]istrict [c]ourt's record-keeping duties." With regard to the DMV Print-Out, the State responds by pointing to decisions by this court that this type of record is not testimonial. See State v. Saxton, No. CAAP-16-0000323, 2020 WL 507965, at *2 (Haw. App. Jan. 31, 2020) (SDO) (DMV printout not testimonial); State v. Hardoby, No. CAAP-12-0000514, 2015 WL 755866, at *2 (Haw. App. Feb. 23, 2015) (SDO) (same).

The State maintains that the Traffic Abstract is similar to the DMV Print-Out in that it "is a summary of [Okada]'s traffic records that is kept by the [d]istrict [c]ourt

as part of its record-keeping duties" and that those records were "not specifically created for future use in court[,]" citing HRS §§ 604-17 (2016) (providing that district courts shall be "courts of record" that preserve in writing their proceedings and judgments) and 287-3 (2020 & Supp. 2024) (providing that district courts have a duty to furnish traffic abstracts to any person requesting them, including for insurance, employment, and other purposes). As for Okada's non-testimonial hearsay argument, the State responds that the Confrontation Clause is "satisf[ied]" when non-testimonial hearsay "qualifies for a firmly rooted exception to the hearsay rule," and that all of the exhibits were public records, which "fall within a firmly rooted exception to hearsay within the meaning of HRE Rule 803(b)(8)."

Here, the admission of the Prior Judgments and the traffic records did not violate the Confrontation Clause because the exhibits were non-testimonial public records. See Davis v. Washington, 547 U.S. 813, 822 (2006) (A statement is "testimonial" when its "primary purpose . . . is to establish or prove past events potentially relevant to later criminal prosecution."); Melendez-Diaz v. Massachusetts, 557 U.S. 305, 322 (2009) ("[A] clerk's certificate authenticating an official record" is "traditionally admissible" even "though prepared for use at trial[.]"). Public records such as the Prior Judgments, the DMV Print-Out, and the Traffic Abstract in this case "are generally admissible absent confrontation" because they have "been created for the administration of an entity's affairs" and not for a testimonial "purpose of establishing or proving some fact at trial." See State v. Cruz, 135 Hawaiʻi 294, 297, 349 P.3d 401, 404 (App. 2015) (quoting Melendez-Diaz, 557 U.S. at

324); State v. Ho, No. CAAP-20-0000059, 2022 WL 1684279 at *3 (Haw. App. May 26, 2022) (SDO) (notice of administrative review decision created in the regular course of an unrelated prior proceeding not testimonial); Saxton, 2020 WL 507965 at *2 (DMV printout not testimonial).

Okada's alternative argument -- that the admission of Exhibits 1 through 7 as non-testimonial hearsay did not comply with the Confrontation Clause and Roberts' admissibility requirements -- also lacks merit. The 2007 State v. Fields decision adopted the Crawford v. Washington requirements of a showing of unavailability and prior opportunity for cross-examination for the admission of testimonial hearsay statements consistent with the Confrontation Clause. 115 Hawaiʻi at 513, 168 P.3d at 965. With regard to non-testimonial hearsay statements, however, the Hawaiʻi Supreme Court affirmed the "continued viability" of the two-part Roberts test for such statements' admission. Fields, 115 Hawaiʻi at 516, 168 P.3d at 968 (citing, e.g., United States v. Hendricks, 395 F.3d 173, 179 (3d Cir. 2005) ("[U]nless a particular hearsay statement qualifies as 'testimonial,' *Crawford* is inapplicable and *Roberts* still controls.")). For admission of non-testimonial hearsay statements, Roberts requires a showing of (1) witness unavailability (**unavailability requirement**) and (2) statements bearing "adequate indicia of reliability" (**reliability requirement**) for admission. Fields, 115 Hawaiʻi at 512, 516, 168 P.3d at 964, 968.

Because Roberts continues to apply to non-testimonial statements, pre-Fields Hawaiʻi law applying Roberts to non-testimonial statements, such as this court's decision in State v. Ofa, 9 Haw. App. 130, 828 P.2d 813 (App. 1992), is

instructive. With regard to the unavailability requirement of Roberts, Ofa explained that this first requirement does not "extend . . . to all out-of-court statements[,]" but is only applicable "when the challenged out-of-court statements were made in the course of a prior judicial proceeding." Ofa, 9 Haw. App. at 138, 828 P.2d at 818 (quoting White v. Illinois, 502 U.S. 346, 354 (1992)). Here, the non-testimonial statements in the Prior Judgments, the DMV Print-Out, and the Traffic Abstract were not "made in the course of a prior judicial proceeding" and the unavailability requirement of Roberts does not apply.

As for the reliability requirement of Roberts, Ofa explained that "where proffered hearsay has sufficient guarantees of reliability to come within a firmly rooted exception to the hearsay rule, the Confrontation Clause is satisfied." 9 Haw. App. at 138, 828 P.2d at 818 (quoting White, 502 U.S. at 356). This court noted that "[t]he public records and reports exception to the hearsay rule is firmly rooted in our jurisprudence." Id. Here, Exhibits 1 through 7 were admissible under the firmly rooted public records exception to the hearsay rule in HRE Rule 803(b)(8). The admission of the non-testimonial statements in Exhibit 1 through 7 thus satisfied the Roberts reliability requirement, and Okada's Roberts challenge lacks merit.

Hearsay challenge

Okada challenges the traffic records in State's Exhibits 1 and 2 as "inadmissible hearsay" that does not "fall under HRE Rule 803(b)(6) and 803(b)(8) hearsay exceptions." Okada argues that there was "insufficient evidence" that the exhibits "were made in the course of a regularly conducted activity" and that rather, they were "created for purposes of

the trial of Okada[,]" and therefore the exhibits were hearsay that did not "fall under HRE Rule 803(b)(6) and 803(b)(8) hearsay exceptions."

Here, the DMV Print-Out and the Traffic Abstract were both documents signed by an appropriate custodian of records, certifying that the documents reflect official records containing Okada's driving record. Okada's arguments go to the weight and not the admissibility of these exhibits, which met the requirements for admission under the HRE Rule 803(b)(8) public records exception to the hearsay rule.

(3) Okada argues there was insufficient evidence to sentence Okada as a repeat DWOL offender under HRS § 286-136(b) because "[t]he Prior Judgments are not sufficiently linked to . . . Okada" and "[t]he Traffic Abstract does not adequately prove a prior conviction." Although the Prior Judgments name the defendant as "Kevin Okada" or "Kevin K Okada," Okada contends there is not sufficient evidence to show that the defendant was the same Kevin Okada in the instant case, because the Prior Judgments do not contain "date of birth or social security information" and the "Defendant's signature, address, and phone number are left blank." Okada acknowledges that State v. Nishi, 9 Haw. App. 516, 527, 852 P.2d 476, 482 (App. 1993) held that "a certified copy of a person's traffic abstract is satisfactory evidence to establish" a prior conviction, but urges this court to "reconsider" Nishi due to "changes in both the law and technology[.]"

Okada's arguments challenging the sufficiency of evidence go to the credibility and weight of the evidence that we have concluded was properly admitted. See Fisher v. Fisher, 111 Hawaiʻi 41, 46, 137 P.3d 355, 360 (2006) ("[A]n appellate

court will not pass upon issues dependent upon the credibility of witnesses and the weight of evidence; this is the province of the trier of fact." (citation omitted)); Nishi, 9 Haw. App. at 526-27, 852 P.2d at 481-82 (holding that defendant's traffic abstract was "satisfactory evidence" of defendant's prior conviction because traffic abstracts include a "clerk's notation," their use was authorized by HRS Chapter 287, and they include the person's name, driver's license number, social security number, and date of birth).

"Evidence adduced in the trial court must be considered in the strongest light for the prosecution." State v. Kalaola, 124 Hawaiʻi 43, 49, 237 P.3d 1109, 1115 (2010) (citation modified). "'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." Id. (citation omitted).

Here, the citing officer identified "Kevin Okada" in court as the person he cited for DWOL. The citation identified the license plate number of Okada's vehicle as "PNY748," which matches the number noted in five different cases in the Traffic Abstract, in which a defendant named "Kevin Okada" or "Kevin K Okada" was convicted of DWOL within the preceding five years. The case numbers and names in the Traffic Abstract match those in the Prior Judgments. The social security number and date of birth of "Kevin Kalai Okada" noted in the Traffic Abstract match that in the DMV Print-Out, which shows Okada's license was expired. We conclude there was substantial admissible evidence to sentence Okada as a repeat DWOL offender under HRS § 286-

136(b). See Davis, 133 Hawaiʻi at 104, 324 P.3d at 914; Wallace, 80 Hawaiʻi at 412, 910 P.2d at 725.

For the foregoing reasons, we vacate the July 31, 2024 "Notice of Entry of Judgment and/or Order and Plea/Judgment," entered by the District Court of the First Circuit, and remand for new trial.

DATED: Honolulu, Hawaiʻi, November 20, 2026.

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/s/ Karen T. Nakasone
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Keith K. Hiraoka
Associate Judge