

*** NOT FOR PUBLICATION ***

NO. 26182

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

HYE HYUN LEE, Defendant-Appellant.

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2005 AUG -5 PM 2:33

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APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
 (CASE NO. 1P102-6070 of 7/25/03; HPD CR. NOS. 02186505; 02186507)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Hye Hyun Lee appeals from the District Court of the First Circuit's December 10, 2003 final judgment of conviction for misdemeanor prostitution, Hawai'i Revised Statutes (HRS) § 712-1200 (1993), and unlicensed massage, HRS § 452-2 (1993).¹ Among her points of error on appeal, Lee contends that, in denying her motion to dismiss due to illegal arrest, the district court erred when it ruled that the Hawai'i and United States Constitutions allow warrantless arrests based on acts committed weeks before the arrest. The State of Hawai'i argues in response that this court lacks jurisdiction to hear the instant appeal and that the arrest was valid.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we resolve the

¹ The Honorable Clarence Pacarro presided over this matter.

parties' contentions and hold as follows: (1) this court has jurisdiction to hear the instant appeal because Lee's notice of appeal was filed on October 22, 2003,² after the district court's January 17, 2003 announcement of her conviction but prior to the court's entry of judgment on December 10, 2003, and was thus timely pursuant to the premature appeals provision of the Hawai'i Rules of Appellate Procedure (HRAP). See HRAP Rule 4(b)(4) ("A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be deemed to have been filed on the date such judgment or order is entered."); (2) Lee's warrantless arrest was unlawful because it took place twenty-two days after the police found probable cause and there were no obstacles preventing them from making the

² Lee's original October 22, 2003 notice of appeal and December 10, 2003 amended notice of appeal purported to appeal the district court's September 23, 2003 order denying Lee's motion to dismiss the charges, which was an interlocutory order not certified for, and therefore not subject to, appeal. See State v. Irvine, 88 Hawai'i 404, 406 967 P.2d 236, 238 (1998) (if a defendant in a criminal case seeks to take interlocutory appeal, it is necessary to move for and receive an order allowing the appeal). Because it was not until her January 26, 2004 second amended notice of appeal that Lee gave explicit notice that she was appealing from the judgment of conviction, her notice may technically have been defective. See State v. Ontiveros, 82 Hawai'i 446, 448 n.5, 923 P.2d 388, 390 n.5 (1996) ("Technically, the conviction was not properly appealed by the amendment of the original notice of appeal. Since an amended notice of appeal relates back to the notice of appeal it purports to amend, it does not appeal an order, judgment, or decree entered subsequent to the notice of appeal it purports to amend.") (Internal quotation signals and citation omitted). However, Lee's intent to challenge her conviction was clear from the outset because the motion to dismiss was both filed and denied after her conviction had already been announced (effectively causing the denial to be more in the nature of a final, rather than interlocutory, order). Particularly in light of the procedural quirks of the case, any failure to perfect the appeal from the judgment does not preclude her right of appeal. See id. ("we have established, as a general proposition, that counsel's failure to perfect an appeal in a criminal case does not preclude an appellant's right to appeal").

arrest in the interim. See State v. Keawe, 107 Hawai'i 1, 6, 108 P.3d 304, 309 (2005) (holding that where the police have probable cause to arrest, have no obstacle preventing them from making the arrest, but wait a significant amount of time before making the arrest, making such arrest without a warrant violates HRS § 803-5); (3) although Lee's arrest was unlawful, that does not entitle her to dismissal of the charges or a reversal of her conviction. See Keawe, 107 Hawai'i at 7, 108 P.3d at 310 ("illegal arrest, standing alone, is insufficient to entitle [the defendant] to a reversal of her conviction") (internal quotation signals and citation omitted). Ordinarily the proper remedy would be to suppress the evidence collected as a result of the unlawful arrest, but in Lee's case the prosecution did not introduce any evidence resulting from her unlawful arrest; thus, there is no evidence to suppress, such that dismissing the charges would be meaningless. See Keawe, 107 Hawai'i at 7, 8 n.9, 108 P.3d at 310, 311 n.9 (holding that the proper remedy for unlawful arrest is the suppression of evidence collected as a result but that reversal would serve no purpose where no such evidence was collected or presented because "the State could simply obtain a warrant for [the defendant's] arrest and re-prosecute her").

Therefore,

IT IS HEREBY ORDERED that the district court's September 23, 2003 order denying Lee's motion to dismiss and

December 10, 2003 judgment of conviction and sentence are affirmed.

DATED: Honolulu, Hawai'i, August 5, 2005.

On the briefs:

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Hye Hyun Lee

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State of Hawai'i

