NOT FOR PUBLICATION

NOS. 25655 AND 25657

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

NO. 25655

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
HABIB SHABAZZ, also known as "T-Bone," Defendant-Appellant,
and MARIO CRAWLEY, also known as "Quick," HARVEY CARVIS,
JAMES SHAKESPEARE, MEKA UGOEZI, and LLOYD SWANSON, Defendants

and

NO. 25657

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
MARIO CRAWLEY, also known as "Quick," Defendant-Appellant,
and HABIB SHABAZZ, also known as "T-Bone," HARVEY CARVIS,
JAMES SHAKESPEARE, MEKA UGOEZI, and LLOYD SWANSON, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 99-0693)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Watanabe and Lim, JJ.)

In this consolidated appeal arising out of a joint bench trial,[1] Defendant-Appellant Habib Shabazz, aka "T-Bone" (Shabazz), appeals (S.C. No. 25655) the January 28, 2003 judgment of the Circuit Court of the First Circuit (circuit court). The circuit court convicted Shabazz of sexual assault in the second degree, and sentenced him to a ten-year indeterminate term of imprisonment. Defendant-Appellant Mario Crawley, aka "Quick"

[1] The Honorable Sandra A. Simms presided.

(Crawley),[2] appeals (S.C. No. 25657) the circuit court's February 21, 2003 amended judgment. The circuit court convicted Crawley of sexual assault in the second degree and attempted sexual assault in the second degree, and sentenced him to two concurrent, ten-year indeterminate terms of imprisonment.

After a painstaking review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve the points of error raised by Defendants as follows:

1. For their first point of error on appeal, Defendants aver that the circuit court's February 24, 2003 order denying Crawley's September 16, 2002 motion to dismiss indictment[3] was error. Although Defendants style their motion as one based upon prosecutorial misconduct before the grand jury, the underlying arguments are mere and impuissant allegations of the State's failure to adduce before the grand jury "evidence which may have tended to undermine the victim's credibility." State v. Bell, 60 Haw. 241, 255, 589 P.2d 517, 525 (1978), overruled on other grounds by State v. Chong, 86 Hawai'i 282, 949 P.2d 122 (1997). Our independent review of the record revealed no indication of the material circumstance: a failure

[2] During trial, Defendant-Appellant Mario Crawley (Crawley) testified that his first name is "Marlo," not "Mario" as he is referred to in various documents filed in this case.

[3] On September 18, 2002, Defendant-Appellant Habib Shabazz filed a joinder in Crawley's September 16, 2002 motion to dismiss indictment.

on the part of the State to present "evidence of a *clearly* exculpatory nature[.]" Id. at 245, 589 P.2d at 520 (emphasis in the original). Even if we assume, *arguendo*, that Defendants' motion to dismiss indictment had colorable roots in allegations of prosecutorial misconduct before the grand jury, we could turn up no such misconduct -- let alone misconduct, singly or in concert, that "invade[d] the province of the grand jury or tend[ed] to induce action other than that which the grand jurors, in their uninfluenced judgment, deemed warranted on the evidence fairly presented before them." Chong, 86 Hawai'i at 289, 949 P.2d at 129. Hence, the circuit court did not abuse its discretion in denying Crawley's motion to dismiss indictment. State v. Mendonca, 68 Haw. 280, 283, 711 P.2d 731, 734 (1985).

2. For their other point of error on appeal, Defendants contend there was insufficient evidence to support their convictions. We disagree. There was substantial evidence to support the convictions. "The testimony of one percipient witness can provide sufficient evidence to support a conviction. Moreover, it is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses." State v. Pulse, 83 Hawai'i 229, 244-45, 925 P.2d 797, 812-13 (1996) (brackets, citations and internal quotation marks omitted). See also State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998). In this connection, we observe that the circuit court is not required to express findings of fact and

conclusions of law in rendering its decision, even on the material elements of an offense, where none are requested. Hawai'i Rules of Penal Procedure Rule 23(c) (2003); State v. Wells, 7 Haw. App. 510, 512-13, 780 P.2d 585, 586-87 (1989); State v. Bigelow, 2 Haw. App. 654, 654, 638 P.2d 873, 874 (1982). And our review of the record in the same regard revealed nothing that even remotely suggests exceptionable bias on the part of the circuit court judge. State v. Yip, 92 Hawai'i 98, 106, 987 P.2d 996, 1004 (App. 1999).

Therefore,

IT IS HEREBY ORDERED that the January 28, 2003 judgment and the February 21, 2003 amended judgment of the circuit court are affirmed.

DATED: Honolulu, Hawai'i, July 26, 2005.

On the briefs:

Lane Y. Takahashi and
Glenn D. Choy,
for defendants-appellants.

James M. Anderson,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

James S. Burns
Chief Judge

Corinne K.A. Watanabe
Associate Judge

Associate Judge