

*** NOT FOR PUBLICATION ***

NO. 25241

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

TIOLU LONO and IOSEFO FALANIKO, Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. JR 01-0015)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant the State of Hawai'i (the State) appeals from: (1) the July 18, 2002 order of the circuit court of the first circuit, the Honorable Sandra A. Simms presiding, dismissing an indictment against defendants-appellees Tiolu Lono (Lono) and Iosefo Falaniko (Falaniko) [hereinafter, collectively, "Appellees"]; and (2) the circuit court's July 18, 2002 findings of fact, conclusions of law, and order granting Lono's motion to suppress a field show-up identification.

On appeal, the State raises the following points of error: (1) the circuit court abused its discretion in dismissing the indictment, inasmuch as Appellees were not denied a fair and impartial grand jury proceeding; and (2) the circuit court erred in suppressing Lono's field show-up identification because the identification was not "unreliable."

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to

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the arguments advanced and the issues raised, we hold that: (1) the circuit court abused its discretion in dismissing the indictment, inasmuch as testimony elicited during the grand jury proceeding did not clearly appear to have improperly influenced the grand jurors, see State v. Scotland, 58 Haw. 474, 477, 572 P.2d 497, 499 (1977); and (2) the circuit court erred in suppressing Lono's field show-up identification, inasmuch as the court's findings of fact do not support its conclusion that the identification was "unreliable," see State v. Okumura, 78 Hawai'i 383, 391, 894 P.2d 80, 88 (1995). Therefore,

IT IS HEREBY ORDERED that the orders from which the appeal is taken are reversed.

DATED: Honolulu, Hawai'i, March 22, 2005.

On the briefs:

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for the plaintiff-appellant
State of Hawai'i

Louis Michael Ching
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Tiolu Lono

Cindy A.L. Goodness,
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