

**Electronically Filed
Intermediate Court of Appeals
CAAP-12-0000672
18-NOV-2015
08:38 AM**

NO. CAAP-12-0000672

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant
v.
JAN MOXLEY, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 05-1-0244)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, and Foley and Fujise, JJ.)

Plaintiff-Appellant State of Hawaii (State) appeals from the "Findings of Fact and, Conclusions of Law and Order Re: Defendant's Motion to Dismiss Indictment for Destruction of Evidence" (Dismissal Order).

The case against Defendant-Appellee Jan Moxley (Moxley) had been set for retrial after this court vacated his Judgment of Conviction and Probation Sentence due to prosecutorial misconduct. Prior to the retrial, Moxley moved to dismiss the charges against him based on the State's loss or destruction of original photographs taken by the police during the investigation. The Circuit Court of the Third Circuit (Circuit Court)^{1/} granted Moxley's motion, ruling that the loss of the original photographs was "so critical" that it would render the

^{1/} The Honorable Glenn S. Hara presided.

retrial "fundamentally unfair." The Circuit Court filed its Dismissal Order on June 29, 2012.

On appeal, the State argues that the Circuit Court abused its discretion in granting Moxley's motion to dismiss. We affirm.

The State had no explanation for why the original photographs were lost or destroyed. The case was essentially a credibility contest between Moxley and the CW, who had conflicting versions of the incident. Having presided over the first trial, the Circuit Court was intimately familiar with the case, the nature of the prosecution and defense evidence, and the impact that the loss of evidence would have. We cannot say that the Circuit Court abused its discretion in granting Moxley's motion to dismiss. See State v. Wong, 97 Hawai'i 512, 517, 40 P.3d 914, 919 (2002) ("An appellate court reviews a trial court's decision to dismiss an indictment for abuse of discretion.").

We affirm the Circuit Court's Dismissal Order.


DATED: Honolulu, Hawai'i, November 18, 2015.

On the briefs:

Jefferson R. Malate
Deputy Prosecuting Attorney
Office of the Prosecuting Attorney
County of Hawai'i
for Plaintiff-Appellant

Keith S. Shigetomi
for Defendant-Appellee


Chief Judge


Associate Judge


Associate Judge