

NO. 22489

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

FRANCES E. MILFORD, Defendant-Appellant  
(D.C. NO. 98-382)

---

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JOHN P. HARTSHORN, Defendant-Appellant  
(D.C. NO. 98-380)

---

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

JOSEPH E. DAVIS, Defendant-Appellant  
(D.C. NO. 98-381)

---

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(D.C. NOS. 98-382, 98-380, and 98-381)

SUMMARY DISPOSITION ORDER

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

The cases of Defendants-Appellants Frances E. Milford  
(Milford), John P. Hartshorn (Hartshorn), and Joseph E. Davis

(Davis) (collectively, Defendants) (S.Ct. No. 22489) were tried together with the case of Maiika Kalama (Kalama) (S. Ct. No. 22457) on the same stipulated facts, by the same judge of the district court of the first circuit. Kalama had been arrested with Defendants at the same time and place and Kalama and Defendants were all charged with indecent exposure, HRS § 707-734 (1993).<sup>1</sup> At the time of their arrests, all defendants were nude. Kalama was lying on a beach towel, facing and conversing with another nude male. Milford was leaning over eating a sandwich. Hartshorn was sitting and reading a newspaper. Davis was sitting in a beach chair reading a book. All defendants joined in argument to the same district court judge who convicted them on the same grounds and subjected all to the same sentence. All defendants appealed.

---

<sup>1</sup> Hawai'i Revised Statutes (HRS) § 707-734 (1993) states:

**Indecent exposure.** (1) A person commits the offense of indecent exposure if, the person intentionally exposes the person's genitals to a person to whom the person is not married under circumstances in which the actor's conduct is likely to cause affront.

(2) Indecent exposure is a petty misdemeanor.

On September 21, 1999, Defendants' appeal in S.Ct. No. 22489 was assigned to the Intermediate Court of Appeals (ICA). On May 5, 2000, the ICA affirmed Defendants' convictions by summary disposition order (SDO) because transcripts of the relevant proceedings were not in the record. On July 21, 2000, Defendants' appeal was reassigned from the ICA to this court.<sup>2</sup> The transcripts of the relevant proceedings having been filed in this court, and the appeal having been reassigned to this court, the ICA's May 5, 2000 SDO in this appeal, S.Ct. No. 22489, is vacated.

State v. Kalama, No. 22457, (Haw. Sept. 29, 2000), sets forth the relevant facts, law, and arguments common to the parties' appeals. Considering the law, we reversed Kalama's conviction. Kalama is precedent for Defendants' appeal and its holding applies to Defendants Milford, Hartshorn, and Davis. Therefore,

---

<sup>2</sup> Defendants' cases were not consolidated for trial pursuant to Hawai'i Rules of Penal Procedure Rule 13, but were heard at the same time. Their appeal was assigned to the ICA on September 21, 1999. On May 5, 2000, the ICA issued a summary disposition order affirming their convictions because of lack of transcripts of the proceedings. On May 9, 2000, Defendants filed a motion for reconsideration of the SDO and on May 15, 2000, the ICA ordered its SDO vacated on the condition that Defendants file a motion for consolidation of their appeal with No. 22457, State v. Kalama, pending before this court and that this court grant the motion. On May 18, 2000, Defendants filed a motion to consolidate their appeal with No. 22457, State v. Kalama. On May 24, 2000, this court denied the motion. On July 21, 2000, Milford was ordered reassigned to this court.

IT IS HEREBY ORDERED that Defendants' convictions are reversed for the same reasons set forth in Kalama.

DATED: Honolulu, Hawai'i, September 29, 2000.

On the briefs:

Gretchen A. Marshall and  
Mary A. Wilkowski for  
defendants-appellants.

Alexa D. M. Fujise, Deputy  
Prosecuting Attorney,  
City and County of  
Honolulu, for plaintiff-  
appellee