

NO. 22812

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

KEVIN WILLIAM CROSS and CINDY K. TAKARA, Defendants-Appellees

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-1852)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant State of Hawai'i [hereinafter the prosecution] appeals from the August 17, 1999 pretrial order, issued by the circuit court of the first circuit, the Honorable Michael A. Town presiding, granting defendant-appellee Cindy K. Takara's (Takara) motion to dismiss charges, which defendant-appellee Kevin Cross (Cross) joined. On appeal, the prosecution argues that: (1) the circuit court procedurally erred by failing to comply with the requirements this court set forth in State v. Rodrigues, 88 Hawai'i 363, 364, 966 P.2d 1089, 1090 (1998), concerning disclosure and privilege of information relating to a confidential informant (CI), and (2) the circuit court substantively erred in ruling that information concerning the CI be disclosed.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) the circuit court procedurally failed to comply with the requirements set forth by this court in Rodrigues, and (2) because the circuit court failed to comply with the requirements in Rodrigues, there is an insufficient basis from which to conclude that the circuit court substantively erred in requiring disclosure of information relating to the CI. Furthermore, this

court admonishes the circuit court to adhere to the four Rodrigues requirements, set forth as follows:

- (1) the circuit court must determine if there is information in the affidavit that could lead to the identification of the CI;
- (2) the circuit court must determine if the information is discoverable or privileged pursuant to HRE Rule 510 or HRPP Rule 16(e) (5) (ii) and state its reasons in findings of fact and conclusions of law;
- (3) if the information is privileged, the circuit court must determine if an exception applies to the privilege; and
- (4) if the circuit court believes an exception applies, it should state its reasons in findings of fact and conclusions of law.

Id. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is vacated and this case remanded for further proceedings.

DATED: Honolulu, Hawai'i, December 20, 2002.

On the briefs:

Caroline M. Mee,
Deputy Prosecuting Attorney,
for plaintiff-appellant

Jeffrey T. Arakaki,
for defendant-appellee
Kevin Cross

Jon N. Ikenaga,
Deputy Public Defender,
for defendant-appellee
Cindy Takara