

NO. 22990

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

v.

LOGO FETOA, also known as Logo Fetui and Stone,
Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 98-1876)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant, the State of Hawai'i (the prosecution), appeals from the circuit court's order dismissing the indictment of defendant-appellee, Logo Fetoa. The prosecutors filed a complaint against Fetoa charging one count of sexual assault in the third degree, in violation of Hawai'i Revised Statutes (HRS) § 707-732(1)(b)(1993), one count of terroristic threatening in the second degree, in violation of HRS § 707-717(1)(1993), and one count of kidnapping, in violation of HRS § 707-720(1)(d)(1993). On appeal the prosecution argues that the trial court abused its discretion when it dismissed the indictment after there was only one mistrial because the jury was genuinely unable to reach a verdict.

Upon careful review of the record and the briefs submitted by the parties, we resolve plaintiff-appellant's argument as follows: the trial court did not abuse its discretion in granting the motion to dismiss the indictment with prejudice because it determined that a second trial would likely not proceed in a manner different from the original trial or, as posited by the prosecution, likely result in an acquittal of Fetoa, and the trial court's assessment of the strength of the prosecution's case was not erroneous.

THEREFORE, IT IS HEREBY ORDERED that the circuit court's order dismissing the indictment with prejudice is affirmed.

DATED: Honolulu, Hawai'i, December 6, 2000.

On the briefs:

Bryan K. Sano, Deputy
Prosecuting Attorney,
for plaintiff-appellant

Linda C.R. Jameson,
Deputy Public Defender,
for defendant-appellee