

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 25839

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellant,
v.
CINDY K. TAKARA, and KEVIN WILLIAM CROSS,
Defendants-Appellees

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 AUG 29 PM 2:41

FILED

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

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley, and Nakamura, JJ.)

The State of Hawaii (the State) appeals from the April 24, 2003, "Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Compel Discovery of Confidential Informant" (Order Compelling Discovery) of the Circuit Court of the First Circuit (circuit court).¹ Defendants-Appellees Cindy K. Takara (Takara) and Kevin William Cross (Cross) were charged by indictment with Promoting a Dangerous Drug (methamphetamine) in the Third Degree, in violation of Hawaii Revised Statutes (HRS) § 712-1243 (1993) (Count 1); Promoting a Dangerous Drug (cocaine) in the Third Degree (Count 2); and unlawful possession or use of drug paraphernalia, in violation of HRS § 329-43.5(a) (1993 and 2002 Supp.) Prior to trial, Takara filed a "Motion to Compel Discovery of Confidential Informant" in which Cross later joined. The Order Compelling Discovery required the State to

¹ The Honorable Michael Town presided.

disclose the identity of a confidential informant (CI) and dismissed the indictment against Takara and Cross (collectively "the Defendants") because the State refused to comply with its disclosure obligations.

On appeal, the State argues that the Order Compelling Discovery must be vacated because the circuit court made procedural and substantive errors in ordering the State to disclose the CI's identity. We disagree.

After careful review and consideration of the record and the briefs submitted by the parties, we hold as follows:

1. The circuit court's Order Compelling Discovery was sufficient to comply with the procedural requirements set forth in State v. Rodrigues, 88 Hawai'i 363, 364, 966 P.2d 1089, 1090 (1988), for determining whether to disclose information relating to a confidential informant.

2. The circuit court did not err in concluding that the CI would be able to provide testimony necessary to a fair determination of the issue of the Defendants' guilt or innocence and that the failure to disclose the CI's identity would infringe upon the Defendants' constitutional rights. Hawaii Rules of Evidence Rule 510(c)(2) (1993); Hawai'i Rules of Penal Procedure Rule 16(e)(5)(ii). Accordingly, the Order Compelling Discovery was not substantively defective.

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IT IS HEREBY ORDERED that the April 24, 2003, "Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Compel Discovery of Confidential Informant" of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 29, 2006.

On the briefs:

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

Steven Nichols,
Deputy Public Defender,
for Defendant-Appellee
CINDY TAKARA.

Jeffrey Arakaki,
for Defendant-Appellee
KEVIN CROSS.

Corinne K. A. Watanabe

Presiding Judge

Samuel R. Foley

Associate Judge

Craig W. Nakamura

Associate Judge