

DISSENTING OPINION BY ACOBA, J.

In this case, the testimony from the prosecution's witness regarding fingerprint evidence as to which the witness had not been qualified,¹ and speculation and obvious advocacy on the part of the witness,² plainly deprived the defendants of a

¹ The following occurred at the grand jury proceedings of December 4, 2001:

GRAND JUROR: Did they take fingerprints at that time? Gathered evidence?

WITNESS [(HPD Detective)]: Yes, and no fingerprints were identifiable.

GRAND JUROR: Oh, I see.

WITNESS: So we didn't -- we didn't find any at the scene.

GRAND JUROR: Is that --

WITNESS: It's very common.

GRAND JUROR: Okay.

WITNESS: Fingerprints are overrated. You know, on TV a lot of times they say, we will get the fingerprints, we will identify. It's -- it's very hard to get a good identifiable print. Usually they are smeared or they are on top of other prints, so it's -- it's not as common that you may wish it would be. It would be a lot easier if they were.

GRAND JUROR: Sure.

(Emphases added.)

² See supra note 1 and the following which transpired at the grand jury proceedings of December 4, 2001:

A GRAND JUROR: Sure. Now do you know why it took three years for it to come to this point?

THE WITNESS [(HPD Detective)]: I don't know. A lot of times what happens in the department people retire, don't relate to somebody else or I'm working on this or something may sit there. Some cases sometimes falls through the cracks. . . .

A GRAND JUROR: And there was a three-year kind of delay?

THE WITNESS: Yes, there was.

A GRAND JUROR: So --

A GRAND JUROR: The cases are obviously prioritized, too, I imagine?

THE WITNESS: Well, no, not necessarily. I don't think in this case -- this is a very serious case, an important case, and that's why I worked on it because it's not something that you let people get away with. . . .

(continued...)

fair and impartial grand jury proceeding guaranteed under the due process clause of Article I, section 5 of the Hawai'i Constitution. State v. Joao, 53 Haw. 226, 228-29, 491 P.2d 1089, 1090-92 (1971). On the face of the transcript, the testimony "undermine[d] the fundamental fairness and integrity of the grand jury process by invading the province of the grand jury[,]" State v. Chong, 86 Hawai'i 282, 284, 949 P.2d 122, 124 (1997) (citations, internal quotation marks and brackets omitted), and further constituted "other circumstances which prevent[ed] the exercise of fairness and impartiality by the grand jury[,]" id. at 289, 949 P.2d at 129 (quoting State v. Bell, 60 Haw. 241, 256-57, 589 P.2d 517, 526 (1978) (Kidwell, J., concurring) (citations omitted)).

Hence, it cannot be concluded that the circuit court abused its discretion in dismissing the indictment inasmuch as, based upon the grand jury transcript, the court did not "clearly exceed[] the bounds of reason or disregard[] rules or principles of law or practice to the substantial detriment of a party litigant." State v. Klinge, 92 Hawai'i 577, 584, 994 P.2d 509, 516 (2000) (emphasis added). With all due respect, to allow an indictment to stand on this record abrogates the "fair and impartial" requirement imposed on grand jury proceedings. There

²(...continued)
(Emphases added.)

would be no other way to enforce that constitutional guarantee in circumstances that require it, as in this case.

Of course, dismissal would not have precluded a new grand jury proceeding from being convened with the objective of cleansing the case of the tainted testimony which is part of this indictment. Accordingly, I would affirm the circuit court's order dismissing the indictment.³

A handwritten signature in black ink, appearing to be "J. Edwards", written in a cursive style.

³ In light of this position, I do not reach the circuit court's ruling suppressing identification.