

Cr. No. 11782

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
TERRITORY OF HAWAII

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vs.

RAPE

BEW AHAKUMILO, HENRY CHANG,  
JOSEPH KAHAWAI, JR., HORACE  
SHIMITSU IDA and DAVID TAKAI,

Defendants.

MOTION FOR NOLLE PROSEQUI

FILED

AT 11:05 O'CLOCK A.M.

February 13 1933

*[Signature]*  
CLERK

JOHN C. KELLEY, ESQ.,  
Public Prosecutor of the  
City and County of Honolulu,  
Honolulu, T. H.

Attorney for Territory of Hawaii.

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Comes now the Territory of Hawaii, by John C. Kelley, Public Prosecutor of the City and County of Honolulu, Territory of Hawaii, and respectfully moves that this Honorable Court approve the within motion for nolle prosequi as to each and all of the defendants above named which said motion is based upon the following reasons, to wit:

I.

The above named defendants were indicted by the Territorial Grand Jury of the First Judicial Circuit on the 12th day of October, 1931, said indictment charging said defendants with having committed the crime of rape upon the person of the complaining witness, Thalia Hubbard Massie.

The defendants were brought to trial upon said charge before the Honorable A. E. Steadman, then First Judge of the Circuit Court of the First Judicial Circuit, on the 16th day of November, 1931. After a trial lasting seventeen days said case was given to the jury on the 2nd day of December, 1931, and said jury after deliberating upon the guilt or innocence of the

defendants for a period of ninety-seven hours, informed the Court that it was hopelessly deadlocked and unable to agree upon a verdict, were thereupon discharged by the Court and a mistrial entered of record in said cause on the 6th day of December, 1931.

## II.

A careful analysis of the evidence adduced at the former trial indicates clearly the following principal weaknesses in the prosecution's case:-

- (a) The methods employed in securing the identification of the defendants by the complaining witness.
- (b) The lack of medical, physical and material evidence of the alleged rape upon the complaining witness.
- (c) The lack of evidence to overcome the alibi presented by the defendants.

(a) That the methods employed in procuring the identification by the complaining witness of the defendants in this case and the attempted identification of the defendant Ida's car and its license number were not in accordance with modern efficient police methods, is conceded.

The complaining witness, when interviewed at her home immediately after the alleged rape had been reported to the police, repeatedly stated to the police officers present that she could not identify her assailants or the car in which they abducted her; that she did not know the number of said car; was not certain of the make of said car; and that the only distin-

guishing feature of said car that she could recall was a loose flapping top.

On being questioned by John N. McIntosh, Inspector of Detectives, at 9:30 A.M., September 13, 1931, she was asked:

"Q. Do you think you could identify these men, Mrs. Massie?

A. I don't know."

In view of these statements of the complaining witness, it is believed that the belief of the police that the accused were the perpetrators of the alleged crime was made obvious to her through the manner in which the accused were brought before her for identification, and that the ability of the complaining witness to subsequently identify four of the accused resulted from the suggestion contained in the method which was pursued.

It can only be assumed that the reason the complaining witness did not give to the police authorities, immediately after the alleged offense was reported to them, the same details of information regarding her assailants that she was able to furnish by her testimony at the trial, is because she did not possess it at that time and it is entirely within reason to believe that her knowledge of the appearance, dress and other identifying marks of the accused, as testified to by her at the trial, was acquired by events which occurred in the interim.

(b) The circumstances of the rape upon the complaining witness, as related by her, would indicate that some positive traces of the violence used by the persons assaulting her would

be left upon her person and her wearing apparel.

An examination of the complaining witness made shortly after the alleged rape disclosed no evidence of sexual intercourse or marks of violence around her private parts and a microscopic examination of her clothing disclosed no evidence of blood stains or seminal fluid upon those articles of her clothing which would come in contact with her genitalia or be disturbed by an assault upon her. Certain stains resembling blood were found on her upper outer garments but the testimony shows that the complaining witness was bleeding from the mouth and these stains could have resulted from that source. The complaining witness at the time of the alleged assault upon her was wearing a green evening gown of frail material and evening slippers. Yet a careful examination of this dress and other articles of apparel worn by her failed to show any evidence of an attack such as she described, the garments being in perfect condition, neither rumped or torn, except one stocking, and the slippers showed no signs of the wearer having been dragged to the place of assault as testified to by her.

(c) Since the former trial of this case exhaustive investigations have been made by the office of the Attorney General of the Territory of Hawaii, the office of the Public Prosecutor of the City and County of Honolulu and the Pinkerton National Detective Agency Inc. of New York City. Every known fact and circumstance of the case has been reviewed and no effort has been spared to secure evidence additional to that presented at the former trial which would tend to strengthen the case of the prosecution particularly with reference to the

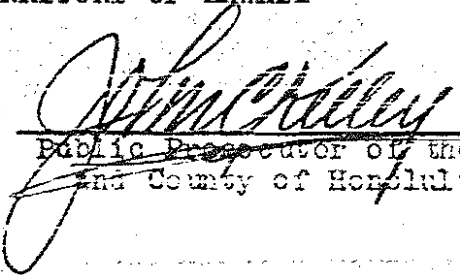
two foregoing matters and which would also aid the prosecution in overcoming the alibi presented by the defendants. All of these investigations embraced a careful examination and analysis of the alibi of the defendants presented at said trial and they have failed to discover any circumstances disproving or tending to disprove any portion of the statements made by the defendants immediately upon their arrest, their examination by the police and the prosecuting officials subsequently, and their testimony and the testimony of the witnesses called on their behalf at the trial. The movements and whereabouts of the defendants on the night of the alleged assault remain precisely as they were originally accounted for by them.

The evidence adduced at the trial of said defendants was such that it is not surprising that a verdict of conviction was not obtained, and, in view of the fact that the above mentioned investigations uncovered no new or additional evidence, there certainly is no more likelihood that a conviction could be obtained on a retrial of the case.

Respectfully submitted this 13<sup>th</sup> day of February, A.D. 1933.

TERRITORY OF HAWAII

By

  
Public Prosecutor of the City  
and County of Honolulu.