

INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI‘I

State v. Cabos

Cabos · No. CAAP-23-0000234 · Decided December 22, 2025

SUMMARY

The Hawai‘i Intermediate Court of Appeals reviewed the State’s appeal from an order dismissing Keola Cabos’s indictment for allegedly failing to define “continuing course of conduct,” along with Cabos’s cross-appeal concerning a separate motion to dismiss based on alleged hearsay before the grand jury. The court held that the indictment, read together with discovery identifying the alleged transactions, sufficiently informed Cabos of the charges and vacated the dismissal order. The court dismissed the cross-appeal for lack of appellate jurisdiction and remanded for further proceedings.

CASE DETAILS

COURT	Intermediate Court of Appeals of the State of Hawai‘i
WRITING FOR THE COURT	Per curiam; Karen T. Nakasone, Chief Judge; Sonja M.P. McCullen, Associate Judge; Kimberly T. Guidry, Associate Judge
JURISDICTION	Intermediate Court of Appeals of the State of Hawai‘i
DECIDED	December 22, 2025
DOCKET	CAAP-23-0000234
DISPOSITION	vacated
PROCEDURAL POSTURE	The State appealed the order dismissing the indictment without prejudice, and Cabos cross-appealed the order denying his second motion to dismiss the indictment.
STANDARD OF REVIEW	The sufficiency of a charging instrument and whether it sets forth all essential elements are reviewed de novo, or under the right/wrong standard. The circuit court's factual findings are reviewed for clear error.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	State of Hawai‘i v. Keola Cabos

TOPICS

- criminal procedure
- appellate jurisdiction
- due process
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether an indictment charging drug-distribution offenses under an aggregation theory is constitutionally insufficient because it does not define the term "continuing course of conduct."
2. Whether Cabos could cross-appeal from the denial of his second motion to dismiss the indictment when there was no judgment of conviction, certified interlocutory order, or applicable collateral-order basis.

HOLDINGS

1. An indictment charging promoting a dangerous drug in the first degree through an aggregation theory is not insufficient merely because it does not include a common-law or other definition of "continuing course of conduct," "continuing conduct," or "continuous offense," where the indictment alleges the statutory elements and, together with information provided during the case, fairly informs the defendant of the nature and cause of the charges.
2. The Intermediate Court of Appeals lacked jurisdiction over Cabos's cross-appeal because the challenged order was not a judgment of conviction, certified interlocutory order, or appealable collateral order.

KEY QUOTATIONS

"Continuous offense" is defined in Decoite as "a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy." (at 6-7)

"We thus conclude the charging document adequately informed Cabos "of the nature and cause of the charge and each element." (at 8)

"A criminal defendant may only appeal from a circuit court's judgment of conviction pursuant to HRS § 641-11 (2016), a certified interlocutory order pursuant to HRS § 641-17 (2016), or from an appealable order pursuant to the collateral order doctrine." (at 9)

FACTUAL BACKGROUND

The State charged Cabos with two counts of promoting a dangerous drug in the first degree based on multiple alleged drug transactions occurring between March and June 2018. The indictment alleged that the distributions occurred "in a continuing course of conduct" and aggregated the transactions to reach the statutory thresholds for methamphetamine and oxycodone. A police incident report provided Cabos with dates and quantities for the alleged transactions, including three methamphetamine buys and five oxycodone buys.

PROCEDURAL HISTORY

The State indicted Cabos on two counts of promoting a dangerous drug in the first degree based on aggregated drug-distribution transactions. The circuit court granted Cabos's first motion to dismiss, concluding that the indictment violated due process because it did not define "continuing course of conduct," but denied his second motion challenging hearsay used in the grand-jury proceedings. The Intermediate Court of Appeals vacated the

dismissal order and remanded, while holding that it lacked jurisdiction over Cabos's cross-appeal from the denial of his second motion to dismiss.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The circuit court's First Order dismissing the indictment is vacated, and the case is remanded for further proceedings consistent with the summary disposition order. The cross-appeal is not entertained for lack of appellate jurisdiction.

CASES CITED

- State v. Van Blyenburg, 152 Hawai‘i 66, 74, 520 P.3d 264, 272 (2022)
- State v. Aquino, 154 Hawai‘i 388, 393, 550 P.3d 1246, 1251 (2024)
- State v. Jardine, 151 Hawai‘i 96, 100, 508 P.3d 1182, 1186 (2022)
- State v. Wheeler, 121 Hawai‘i 383, 390, 396, 219 P.3d 1170, 1177, 1183 (2009)
- State v. Decoite, 132 Hawai‘i 436, 438, 323 P.3d 80, 82 (2014)
- State v. Shaw, 150 Hawai‘i 56, 63-64, 497 P.3d 71, 78-79 (2021)
- State v. Mattiello, 90 Hawai‘i 255, 257-58, 978 P.2d 693, 695-96 (1999)
- State v. Wallace, 80 Hawai‘i 382, 407, 910 P.2d 695, 720 (1996)
- State v. Kealaiki, 95 Hawai‘i 309, 312, 316-17, 22 P.3d 588, 591, 595-96 (2001)
- State v. Johnson, 96 Hawai‘i 462, 470 n.12, 32 P.3d 106, 114 n.12 (App. 2001)